1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3
4
5 RICHARD BOEKEN,)
)
6 Plaintiff,)
) Case No.
7 vs.) BC 226593
)
8 PHILIP MORRIS INCORPORATED, a) Pages 1 - 114
corporation; INTERNATIONAL)
9 HOUSE OF PANCAKES INCORPORATED,)
a corporation, DOES 1 - 100,)
10 Inclusive,)
)
11 Defendants.)
_____)
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16 DEPOSITION OF MARVIN E. GOLDBERG, Ph.D.
17 FRIDAY, FEBRUARY 23, 2001
18 11:05 A.M.
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24 REPORTED BY: LAURA J. MELLINI
25 RPR, CSR NO. 8181
1
1 Deposition of MARVIN E. GOLDBERG, Ph.D., the witness,
2 taken on behalf of the Defendants, on FRIDAY, FEBRUARY
3 23, 2001 at 11:05 A.M., at 777 South Figueroa Street,
4 Forty Fourth Floor, Los Angeles, California, before
5 LAURA J. MELLINI, CSR NO. 8181.
6
7 APPEARANCES OF COUNSEL:
8 FOR PLAINTIFF:
9
10 LAW OFFICES OF MICHAEL J. PIUZE, ESQ.
11 BY: MICHAEL J. PIUZE, ESQ.
12 11755 WILSHIRE BOULEVARD, SUITE 1170
13 LOS ANGELES, CALIFORNIA 90025
14
15 FOR DEFENDANTS:
16
17 ARNOLD & PORTER
18 BY: MAURICE A. LEITER, ESQ.
19 777 SOUTH FIGUEROA STREET
20 FORTY FOURTH FLOOR
21 LOS ANGELES, CALIFORNIA 90017-5844
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2
1 I N D E X
2 WITNESS EXAMINATION PAGE
3 MARVIN E. GOLDBERG, Ph.D.
4 By Mr. Leiter 6

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16 E X H I B I T S
17 NO. PAGE DESCRIPTION
18 1 6 Curriculum Vitae
19 2 6 Deposition - Retained by Marvin Goldberg
20 3 6 Federal Register, Department of Health
21 and Human Services, Food and Drug
22 Administration
23 4 6 Article Entitled Smokers' Misperceptions
24 of Light and Ultra-Light Cigarettes May
25 Keep Them Smoking
3
1 (Exhibits continued)
2 NO. PAGE DESCRIPTION
3 5 6 Article Entitled Smokers are Unaware of
4 the Filter Vents now on Most Cigarettes:
5 Results of a National Survey
6 6 6 Article Entitled Smoker Reactions to a
7 "Radio Message" that Light Cigarettes are
8 as Dangerous as Regular Cigarettes
9 7 6 Document Entitled The History of Tobacco
10 Part I
11 8 6 Article Entitled Brief Report, Role of
12 the Self-Image and Smoker Stereotype in
13 Smoking Onset During Early Adolescence:
14 A Longitudinal Study
15 9 6 Article Entitled Low-Involvement
16 Learning: Memory Without Evaluation
17 10 6 Article Entitled The Last Straw?
18 Cigarette Advertising and Realized Market
19 Shares Among Youths and Adults, 1979-1993
20 11 6 Article Entitled Propaganda, Puffing and
21 the Public Interest
22 12 6 Article Entitled Loopholes and Lapses in
23 the "1997 Tobacco Agreement": Some Devils
24 in the Marketing Details
25 13 6 Document Entitled Growing up Tobacco Free
4
1 (Exhibits continued)
2 NO. PAGE DESCRIPTION
3 14 6 Document Entitled The Role of Advertising
4 and Promotion in the Marketing of Tobacco
5 Products
6 15 6 Document - Expert Witness List
7 16 44 Document - Advocacy Institute
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1 LOS ANGELES, CALIFORNIA; FRIDAY, FEBRUARY 23, 2001
2 11:05 A.M.
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4 (Documents were marked by the CSR as
5 Defendants' Exhibits 1 through 15 for
6 identification and attached to and made a part
7 of this deposition.)
8
9 MARVIN E. GOLDBERG,
10 having been first duly sworn,
11 was examined and testified as follows:
12
13 EXAMINATION
14
15 BY MR. LEITER:
16 Q Good morning, Dr. Goldberg. My name is Maury
17 Leiter. I represent Philip Morris in this lawsuit.
18 You've had your deposition taken before. Isn't that
19 right?
20 A Yes.
21 Q About how many times?
22 A Twice.
23 Q How many of those were in tobacco litigation?
24 A One.
25 Q I take it the other deposition had nothing to
6
1 do with tobacco litigation?
2 A That's right.
3 Q You're familiar with the rules governing your
4 deposition?
5 A I'm not sure what you mean.
6 Q Okay. You recognize that you're under oath,
7 the same as you would be if you were in court. Correct?
8 A Yes.
9 Q And you must tell the truth just the same as
10 if you were in court. Correct?
11 A Yes.
12 Q And I'm going to ask questions, and you should
13 obviously listen to the question and answer it as best
14 you can. If for some reason you don't understand my
15 question, please tell me. Then I will try to clarify it
16 for you. Okay?
17 A Okay.
18 Q You have been retained as an expert witness in
19 this case?
20 A Yes.
21 Q When were you first contacted about being an
22 expert witness in this case?
23 A Three weeks ago.
24 Q By telephone, by letter --
25 A My memory is not too good on this.
7

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1 Q It was about three weeks ago is your best
2 recollection?
3 A Within a few weeks. Give or take.
4 Q How were you contacted?
5 A By phone.
6 Q Who called you?
7 A Geraldine Weiss.
8 Q Had you been expecting the call?
9 A No.
10 Q What did she say, and what did you say in that
11 phone call as best you can recall?
12 A She asked whether I would be interested in
13 being an expert witness in a case that dealt with a
14 cigarette smoker and vis-a-vis Philip Morris.
15 Q And what else do you recall her saying, and
16 what do you recall you saying?
17 A I asked how they got my name, and they said
18 that I was referred to them by Rick Pollay.
19 Q Did you agree to be an expert witness in this
20 case during that phone call?
21 A Tentatively, I believe.
22 Q Did you discuss with Ms. Weiss the nature of
23 your assignment in this case?
24 A Not very extensively. Not in the first call.
25 I think it was -- it must have been a few sentences
8
1 related to the parameters of my expertise.
2 Q What do you recall from that phone call being
3 discussed about the parameters of your assignment in
4 this case?
5 A It would relate to my expertise. It would
6 refer to -- if I was to be an expert witness, referred
7 to youth, advertising effects on youth, cigarettes,
8 cigarette smoking, and the work I've done in addition on
9 adult smoking.
10 Q How long did that phone call last?
11 A Not very long. Five minutes.
12 Q Did you discuss your rates or your fees for
13 being an expert witness?
14 A It must have been in that phone call. I don't
15 remember whether it was in that one or a subsequent one.
16 Q Between that phone call and this morning, how
17 many conversations have you had with any lawyer for the
18 plaintiff in this case?
19 A It's hard to answer because there were a
20 couple, like, miniscule ones, asking directions how to
21 get here.
22 Q You can exclude the ones just asking for
23 directions.
24 A There wasn't a whole lot of -- I asked to get
25 the -- some summary of the deposition at one point in
9
1 one call. They had been very brief. Substantive calls,
2 one or two additional ones.
3 Q One or two calls in addition to the first one
4 you've described with Ms. Weiss. Is that correct?
5 A Yeah, yeah, minimally substantive.
6 Q Let's talk about the first one. How long
7 after that first phone call with Ms. Weiss was the next
8 phone call?
9 A This is a guess. A week.
10 Q Who did you speak to?
11 A Either Geraldine Weiss or the paralegal, and

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12 they were -- they were going -- I think it was to tell
13 me they were going to send me -- the sequence is not
14 very clear in my head. That's all I remember. Either
15 Geraldine Weiss or the paralegal, and I guess there
16 was -- again, I said I really would like to find out
17 something about the man in question, and could you send
18 me something. And they indicated they would.
19 Q Who initiated that call?
20 A I don't remember.
21 Q You do remember there was a second phone call
22 substantive after that. About how long -- about how
23 long later did that phone call take place?
24 A Again, it's sort of a trickling. I don't even
25 know if it was substantive. There was very little that
10
1 transpired substantive between me and Mr. Piuze's
2 office.
3 Q My question was about that next phone call.
4 How long after the phone call where you asked for some
5 information did that phone call take place?
6 A Part of the problem is I've been traveling. I
7 think it was when I actually got to -- spent about five
8 days at a conference in Scottsdale. I think it was once
9 I was there.
10 Q When was that?
11 A About a week ago.
12 Q Who initiated the call?
13 A I think I did. Again, I was trying to find
14 out exactly when and how I would get here and whether I
15 would have any contact, human contact, physical contact
16 with these folks before I actually saw you.
17 Q Who did you speak to?
18 A I kept either trying to get Geraldine Weiss
19 and sometimes getting a paralegal and sometimes getting
20 her, and it was just a couple of calls back and forth.
21 Most of the time they weren't in and -- anyway, I got
22 here. But there wasn't a whole lot of substance that we
23 discussed prior to my getting here.
24 Q Other than those phone calls that you
25 described, have you had any other communications of any
11
1 kind with lawyers representing the plaintiff in this
2 case?
3 A Michael and I chatted for 10 minutes or 20
4 minutes before we got up here.
5 Q This morning?
6 A Yes.
7 Q Where were you when you chatted this morning?
8 A In the lobby.
9 Q Of my office?
10 A Downstairs.
11 Q What did you talk about?
12 A The general procedures of a deposition, as I
13 am a relative novice in this.
14 Q Anything else?
15 A Canada. We both have connections to Canada.
16 Q Any discussion about the case?
17 A I indicated a little of my background in terms
18 of where I felt my expertise was.
19 Q Any discussion about the plaintiff?
20 A No. Actually, on the phone yesterday -- we
21 talked yesterday on the phone, and briefly Michael told
22 me that he had been quite ill even when deposed.

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23 Q Let's continue talking about your meeting with
24 Mr. Piuze this morning. Any discussion during that
25 meeting about the plaintiff?
12
1 A I don't think so, no.
2 Q Any discussion about this case?
3 A He mentioned that there had been a ten-year
4 gap where nobody could be sued in the state, and now I
5 guess you can be.
6 Q You do need to speak up a little bit to make
7 sure the court reporter gets everything.
8 Any discussion about what opinions you might
9 be asked to offer in this case?
10 A No. He said just simply by way of general
11 procedures that I would be asked that question.
12 Q Any discussion about what your answer to the
13 question would be?
14 A Did we have a discussion then?
15 Q Talking about your discussion this morning.
16 A Well, I indicated, as much as I just did
17 earlier, that I feel that my expertise goes to the
18 question of youth and advertising and to some extent
19 cigarette smoking and the history of the issue.
20 Q Anything else you recall about your
21 conversation with Mr. Piuze this morning?
22 A No.
23 Q You do need to speak up.
24 A Sorry.
25 Q You also mentioned you had a conversation on
13
1 the phone with Mr. Piuze yesterday. Is that correct?
2 A Yes.
3 Q Where were you when you had that phone
4 conversation?
5 A We had moved from Scottsdale to visit friends
6 in Palm Springs.
7 Q Was anyone on the phone to your knowledge
8 other than you and Mr. Piuze?
9 A No.
10 Q How long did the phone call last?
11 A My memory on these -- I wish my memory was
12 better with these things. Ten minutes. Five or ten
13 minutes.
14 Q Who initiated the call?
15 A I did, and he called me back.
16 Q What did you discuss in that phone call?
17 A That we'd try to get together earlier, prior
18 to the meeting -- prior to the deposition. Pleasantries
19 about Canada. Directions how to get here.
20 Q You mentioned a few minutes ago you had some
21 discussion yesterday about the plaintiff.
22 A Just -- I indicated that I had read these -- I
23 guess this summary of the deposition that the plaintiff
24 had taken, and Michael mentioned that I should be aware
25 that he was receiving treatment as he was getting the
14
1 deposition -- as he was being deposed.
2 Q Anything else you recall about the
3 conversation?
4 A Not a whole lot.
5 Q Any discussion about what opinions you might
6 be asked to offer in this case?
7 A Nothing very extensive, no.

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8 Q I show you what's been marked as Exhibit 1.
9 What's that?
10 A That's my vitae.
11 Q That's the most recent version?
12 A I just recently added an article that is due
13 for publication. I think that may be one shy -- it's
14 almost perfectly up to date.
15 Q What is a refereed journal article?
16 A A refereed journal article is one in which
17 there are peer referees that review it and initially
18 suggest -- well, to indicate whether they think that
19 it's in the ballpark for publication. And if it is,
20 suggest improvements along the way and eventually make a
21 judgment as to whether it is or is not worthy of
22 publication.
23 Q The articles listed under the heading Refereed
24 Journal Articles -- are those articles that you authored
25 or coauthored?
15
1 A I would say yes -- yes.
2 Q That's what I'm trying to understand. By
3 refereed journal article are these articles that you
4 wrote, or are these articles that you reviewed before
5 they were published in the peer review journal?
6 A These are the ones I wrote or contributed to
7 write that were reviewed by others.
8 Q Could you please indicate which of your edited
9 books and chapters and which of your journal articles
10 concern smoking issues.
11 A It might take me a minute or two.
12 Q If you could just mark them with an X, that
13 would be fine.
14 A Okay. With regard to the edited books, I
15 believe that within the book there were some chapters
16 relating to smoking that I read and reviewed but didn't
17 write.
18 Q Why don't you put an X next to the book that
19 you're referring to.
20 A Likewise, there's a chapter in a book where I
21 believe I make reference to cigarettes, but it may be in
22 passing.
23 Q Okay. Same thing.
24 A X?
25 Q X.
16
1 A These X's too here.
2 Q Let's turn to the refereed journal articles
3 and if you could put an X by articles that have to do
4 with smoking.
5 A Once again, there are sometimes some summary
6 pieces that may or may not -- I don't remember -- refer
7 to cigarettes. I don't know. I might put a question
8 mark. I'll put an X with parentheses around them. All
9 right. I hope I haven't missed any, but here you are.
10 Q Thank you. Let's take a look at what's been
11 marked as Exhibit 2 to your deposition, which is two
12 pieces -- two groups of papers stapled together, but it
13 appears to be all part of the same document. What is
14 that?
15 A It's indicated to be a deposition of Richard
16 Boeken, condensed transcript.
17 Q And have you read that?
18 A Yes. I should indicate that I received

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19 another small portion just a day or two ago and didn't
20 have time to copy it for you.
21 Q Do you recall what that was?
22 A Yeah, I've got it with me. The others I've
23 all made copies for you.
24 Q For the record Dr. Goldberg has handed me a
25 transcript of Mr. Boeken's deposition, a copy of the
17
1 deposition of Thursday, December 28th, Wednesday,
2 December 27, and Wednesday, December 20th. Is that
3 right?
4 A Yes, if you're asking me.
5 Q Okay. Collectively, talking about these
6 deposition transcripts that we've just identified, did
7 you receive those from plaintiff's counsel?
8 A Yes.
9 Q Other than those deposition transcripts, what
10 have you received from plaintiff's counsel?
11 A Just the formal letter indicating where I
12 should come and -- I've got that somewhere -- that I
13 should have these materials and --
14 Q Do you have a copy of that letter?
15 A I've got it somewhere.
16 Q Dr. Goldberg has handed me a letter from Mr.
17 Piuze dated February 14, and attached to that is the
18 Notice of Deposition served by counsel for Philip Morris
19 on the plaintiff.
20 Other than these materials, Dr. Goldberg, have
21 you received any other materials in this case from
22 plaintiff's counsel?
23 A No.
24 Q Have you provided any materials to plaintiff's
25 counsel?
18
1 A No.
2 Q Have you asked for any other materials from
3 plaintiff's counsel?
4 A No.
5 Q Do you anticipate reviewing any other
6 materials related to this case between now and your
7 deposition -- excuse me -- between now and your
8 testimony at trial?
9 A I may refer to extensions of what I've given
10 you.
11 Q What do you mean by extensions of what you've
12 given me?
13 A A number of these are summary reports, and
14 they referred to other articles, and I in many instances
15 read them, may want to go back and reread them.
16 Q You're referring to the stack of publications
17 and articles that we marked, which we'll talk about in a
18 minute?
19 A Right.
20 Q Do you anticipate reviewing any other
21 materials about Mr. Boeken before your testimony in this
22 case?
23 A I don't know whether any additional aspects of
24 the deposition will be worthwhile to look at or not.
25 Q Let's take a look at what has been marked as
19
1 Exhibits 3 through 14, and with respect to each if you
2 could just identify it, Dr. Goldberg, and explain why
3 you've turned it over this morning.

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4 A Okay. Number 3 is the Federal Register,
5 Department of Health and Human Services, Food and Drug
6 Administration, Regulations Restricting the Sale of
7 Distribution of Cigarettes and Smokeless Tobacco to
8 Protect Children and Adolescents; Final Rule.
9 This represents just a portion of that
10 document which focuses on the advertising-related issues
11 that were discussed.
12 Q Why is that disclosed today?
13 A It represents a summary body of literature by
14 a government agency that has some -- I think widely
15 regarded as having some considerable validity. Broad
16 summary of the views of experts in the field at the
17 time.
18 Q And you believe that to be relevant to the
19 testimony you may give in this case?
20 A Yes.
21 Q Have you reviewed it in preparation for your
22 deposition today?
23 A Yes.
24 Q Let's move on to the next one.
25 A Okay. Number 4. "Smokers' Misperceptions of
20
1 Light and Ultra-Light Cigarettes May Keep Them Smoking."
2 This is an original piece of research that I worked on
3 with the lead author, Lynn Kozlowski, and is there
4 because it's, A, some of my own direct work and, B,
5 speaks to the question of light and ultra-light
6 cigarette smokers.
7 Q Do you have an understanding as to whether
8 light or ultra-light cigarette smokers have a bearing on
9 this case?
10 A Yes.
11 Q What's your understanding?
12 A I believe that the plaintiff at one point
13 switched to Marlboro Lights.
14 Q Please take a look at the next one.
15 A Smokers -- 5. "Smokers are unaware of the
16 filter vents now on most cigarettes; results of the
17 national survey."
18 Again, I coauthored this with Lynn Kozlowski
19 among others for the same reasons as the previous one.
20 Q What do you mean "for the same reasons as the
21 previous one"?
22 A This is original research that I contributed
23 to.
24 Q Is it pertinent to the testimony you may be
25 offering in this case?
21
1 A Yes, it is.
2 Q In what way?
3 A It goes with the question that filter vents
4 are on most cigarettes. Most people don't know about
5 them. And they contribute to a misleading aspect of the
6 product.
7 Q Do you have any understanding as to whether
8 Mr. Boeken was aware of the existence or nonexistence of
9 vents on his cigarettes?
10 A In what I read I did not see any reference to
11 vents.
12 Q Please continue.
13 A 6. "Smoker reactions to a 'radio message'
14 that Light cigarettes are as dangerous as Regular

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15 cigarettes."
16 Again, I coauthored this with Lynn Kozlowski
17 and others.
18 Q Keep going.
19 A 7. This is The History of Tobacco, Part I.
20 Just an itemized history of some issues in the history
21 of tobacco marketing.
22 Q That appears to have been downloaded from the
23 Web. Is that correct?
24 A That's right.
25 Q And who searched that site and did the
22
1 downloading?
2 A Good question. That came from another law
3 firm. I just started working with them, but nothing has
4 happened yet. They gave me this.
5 Q Do you remember what law firm?
6 A Skeller Bodi (phonetic) in Philadelphia.
7 Q Do you remember when they gave it to you?
8 A Three months ago.
9 Q Is there a date on the bottom?
10 A Yeah, here. No, I think this is when they got
11 it, but they just copied whatever they had.
12 Q Right, but the date would be the date it was
13 printed from the Web.
14 A 7/31/00.
15 Q Thank you. Please continue.
16 A 8. "Role of the Self-Image and Smoker
17 Stereotype in Smoking Onset During Early Adolescence: a
18 Longitudinal Study."
19 This is an original piece in the Journal of
20 Health Psychology.
21 Q How is that relevant to this case?
22 A The question of how young people understand
23 their self-images, desire to shape their self-images in
24 line with smokers' stereotypes.
25 Q Do you have an understanding of how Mr. Boeken
23
1 understood his self-image when he was a teenager?
2 A I read material too that related in the
3 deposition -- his deposition.
4 Q Do you have an opinion on that subject?
5 A I don't know what you mean by that.
6 Q Do you plan to offer -- do you have an opinion
7 as to the characterization of Mr. Boeken's self-image
8 when he was a teenager?
9 A Yes.
10 Q What is that opinion?
11 A That it very much fits with the general
12 literature that he was a typical teenager with desire to
13 shape his self-image, not having a strong self-image.
14 That self-image was one that closely aligned with the
15 images portrayed by cigarettes generally and, in
16 particular, Marlboro.
17 Q What's the basis of your opinion that
18 Mr. Boeken was a typical teenager?
19 A Reading the deposition.
20 Q Anything else?
21 A I think he's a typical teenager in so far as I
22 said that he is -- his self-image was not well shaped.
23 Q And what's the basis for your opinion that
24 Mr. Boeken's self-image was not well shaped as a
25 teenager?

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24
1 A That he was seeking a crystallized self-image
2 as most or all teenagers do, and that comes out of the
3 deposition.
4 Q Do you have any other basis for this opinion
5 as to Mr. Boeken other than your review of his
6 deposition?
7 A No.
8 Q Do you have a degree in psychology?
9 A I have a Ph.D. in marketing with a minor in
10 social psychology.
11 Q Social psychology is different from
12 psychology, isn't it?
13 A No. Psychology is the umbrella field in which
14 social psychology is a subdomain.
15 Q Are you an M.D.?
16 A No.
17 Q Do you have a degree in psychiatry?
18 A No.
19 Q Is social psychology the study of individual
20 behavior?
21 A Social psychology -- there are many
22 definitions. I will give you an off-the-top-of-my-head
23 one. Social psychology is the study of the individual
24 insofar as he or she relates to the group and how the
25 group relates back to the individual.
25
1 Q In what ways other than you've described is
2 Mr. Boeken, in your opinion, did -- or does Mr. Boeken,
3 in your opinion, fit within the general literature on
4 teenagers and self-image?
5 A That he was, again, seeking to shape his
6 self-image, to crystallize it for himself and to
7 demonstrate it to others. Certainly he mentions wanting
8 to be, and thinking of himself eventually as a macho
9 man. That was a -- that is a common desire of young
10 boys.
11 Q Anything else?
12 A I would probably have to go back and tease
13 through it in detail but...
14 Certainly even insofar as the role of
15 cigarettes in that regard, he saw cigarettes as a way of
16 playing a role in making him macho and fit in with his
17 peers. It was important for him to fit in with his
18 peers, and he smoked along with them. That was pretty
19 typical of trying to grow up as a teenager and trying to
20 know who you are and tell others who you are.
21 Q Anything else?
22 A Not that I can recall right now.
23 Q In your opinion, Doctor, was Mr. Boeken in any
24 way atypical of the literature with regard to his
25 self-image as a teenager?
26
1 A I don't think so.
2 Q Please turn to the next article.
3 A 9. Low-Involvement Learning; Memory Without
4 Evaluation.
5 Q What's that article about, and why is it
6 included in the package you've disclosed today?
7 A This is a piece out of the Journal of Consumer
8 Research, and it documents how the simple repetition of
9 statements, whether they're right or wrong, can lead
10 people to believe them, the simple familiarity with

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11 them.
12 Q Did you author that or contribute to that
13 article in any way?
14 A No.
15 Q Why is that article relevant to this case?
16 A I have lectured from it. I think it's a
17 pretty clear statement of that perspective. It's not
18 the only article in that domain, but it makes the point
19 very clearly.
20 Q What is the point?
21 A As I've stated, that simple familiarity with
22 common advertising phrases or common phrases can lead to
23 their acceptance, and this could be true if statements
24 could be true or false, and it's only familiarity that
25 counts for their acceptance.
27
1 Q Are there particular advertising phrases that
2 you believe that article is relevant to that apply to
3 this case?
4 A I don't remember the specific phrases they
5 use. I'm not even sure that there were -- they were
6 limited to an advertising phrase. I think they included
7 some. The point is more -- it goes more to the
8 familiarity that's created by the prior exposure to
9 whatever is shown, and the fact that people are
10 accepting, without even realizing they've seen things
11 before, actually.
12 They don't have to be students of what they've
13 seen. They've seen it. Don't even remember they've
14 seen it, but come to accept what has been in the
15 environment much more if it has been in the environment
16 than if it's new to them.
17 Q Is it your opinion that that theory applies to
18 advertising phrases by Philip Morris?
19 A It applies broadly to all of advertising
20 insofar as it -- those ads that are heavily repeated,
21 advertising campaigns that last over years and have an
22 integrated theme, those are -- those are such that they
23 build up a familiarity that is akin to what is discussed
24 in this article, and not just -- it's not just limited
25 to phrases, but familiarity broadly, whether it's
28
1 pictorial themes or verbal themes.
2 Q Is it your opinion that that theory applies to
3 either pictorial themes or language or word themes in
4 advertising by Philip Morris?
5 A Yes.
6 Q Which pictorial themes? Which word themes do
7 you have in mind?
8 A Most significantly the Marlboro man, the
9 cowboy over the years.
10 Q Any others?
11 A The very colors that Marlboro uses, the red,
12 the red chevron are so prominent, so prevalent. They
13 fit this quite well.
14 Q Any others?
15 A That's the core.
16 Q You mentioned pictorial aspects of campaigns
17 as well as word aspects of campaigns. Is it your
18 opinion that any word campaigns by Philip Morris fit
19 within this theory you've described?
20 A Certainly. I've never clearly, exactly known
21 which ones are Philip Morris, but a lot of phrases.

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22 "Come Alive with Pleasure." Any of those. If you
23 repeat them often enough, that familiarity has a
24 powerful impact.
25 Q I recognize that you can't right now match up
29
1 each phrase with the cigarette brand, but what other
2 phrases do you have in mind irrespective of which
3 cigarette brand it might be?
4 A Again, I need cued recall. If you showed me a
5 whole bunch -- I don't remember them off the top of my
6 head, but if I saw a whole list, I could sure tell you
7 which ones have been out there.
8 What's the one about -- You Can Do It or
9 something like that? There's a whole series of them,
10 and not being a smoker, my memory isn't as good for them
11 as some others.
12 Q Any others that come to mind other than the
13 two that you've mentioned?
14 A No, but they would come to mind as soon as I
15 saw a list.
16 Q Do you intend to prepare a list for your
17 testimony in this case?
18 A I might, yes.
19 Q From what source would you accumulate such a
20 list?
21 A Just various pieces of literature that are
22 available and refer to the various advertising logos,
23 phrases.
24 Q So I understand --
25 A By the way, one going way back, "Call for
30
1 Philip Morris." That registers in my mind quite often.
2 Q So that I understand, the theory is that
3 repetition of a phrase breeds familiarity with that
4 phrase. Is that correct?
5 A The prevalence of either pictorial or visual
6 or verbal aspects of an ad leads to a familiarity, leads
7 to a validity. It leads to an acceptance.
8 Q What do you mean by "acceptance"?
9 A That the broader society is responding to it,
10 in some sense that the prevalence of it is successful
11 enough that it's around, society accepts it. That's why
12 it has its presence. That it's just comfortable and
13 familiar and makes it right.
14 Now that -- understand that we're attributing
15 a social scientist's analysis on top of the average --
16 the average person we're talking about does not think
17 this through. Does not think at all. It's a very
18 peripheral element in their environment, and it is
19 because of that that it is so powerful. It is just
20 there. Present. Comfortable. Familiar and valid.
21 It's part of the environment.
22 Q By "acceptance" and "comfortable" and
23 "familiar," do you mean that the listener accepts it to
24 be true?
25 A That it's just more likely to be true than if
31
1 it wasn't so prevalent. Not just the listener. The
2 viewer.
3 Q Does this theory apply only to advertising?
4 A It's a broad theory of persuasion.
5 Q My question was does it apply only to
6 advertising?

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7 A No.
8 Q It would apply, wouldn't it, to any statement,
9 image that was prevalent, repeated, pervasive. Is that
10 correct?
11 A In degrees as to how prevalent and pervasive
12 it would be, yes.
13 Q The more prevalent, the more pervasive it is,
14 the more likely it is to be accepted? Your word.
15 A No, let me take issue with this. You can have
16 a very contentious statement or just one that evokes a
17 good deal of thought. That's not what we're talking
18 about here. We're talking about low-involving,
19 background peripheral cues that are carefully crafted so
20 as not to get people to think actively about them.
21 MR. LEITER: Could you read that back, please.
22 (Record read.)
23 BY MR. LEITER:
24 Q Let's break down that answer, Doctor, and talk
25 about it for a couple of minutes. For a statement or an
32
1 image -- strike that.
2 For this theory to be applicable to a
3 statement or image, the statement or image must be
4 low-involving, background peripheral cue. Is that
5 correct.
6 A Yes.
7 Q Could you define what those mean?
8 A It means one that does not occupy the
9 center -- a major portion of your attention as you walk
10 down the street. You're not -- for example, you're not
11 a student of a billboard as you walk or drive by it.
12 Q Something that doesn't require you to think
13 about it. Is that right?
14 A Not a lot about.
15 Q But maybe a little?
16 A Only marginally register it. There has been
17 some registration of it, but not a lot of conscious
18 processing.
19 Q You also mentioned that for this theory to
20 apply to a statement or an image, the statement or image
21 must be carefully crafted so as not to get people to
22 think about it too much. Is that correct?
23 A It may happen that it's naturally such that it
24 doesn't evoke much thought.
25 Q That's my question. Is the intent of the
33
1 person who creates the statement or the image a
2 necessary part of the application of this theory?
3 A No.
4 Q You mentioned a few minutes ago that the
5 colors in Marlboro advertising, the use of the red
6 chevron may have some applicability to this theory. Do
7 you remember that testimony?
8 A Yes.
9 Q What do you mean by that?
10 A The omnipresence of the red, Marlboro red and
11 Marlboro red chevron, be it in the supermarket -- on
12 supermarket carts or carry baskets or in many, many
13 other venues has led to evidence that even young
14 children are very, very aware -- even young children in
15 China are very aware of the red chevron. Nobody taught
16 them that. They don't have to take tests in school.
17 That's part of this issue.

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18 MR. PIUZE: Do you think their awareness of
19 the red chevron has something to do with the fact that
20 it's a Communist country?
21 THE WITNESS: No, there's lots of red there.
22 It's a red chevron. Marlboro.
23 BY MR. LEITER:
24 Q What's the significance of studies that show
25 young children are aware of the red chevron?
34
1 A Awareness of cigarette advertising is an
2 important precursor, an intervening step and predictor
3 of interest in and ultimate adoption of cigarettes.
4 Q Awareness of advertising is a predictor of
5 smoking initiation?
6 A Awareness of even a logo can be an early
7 precursor of interest in and ultimate adoption of --
8 trial and then adoption of cigarettes.
9 Q Can you cite me to some studies that support
10 that opinion?
11 A Which opinion?
12 Q The opinion that you just gave about awareness
13 of a logo in relation to ultimate smoking initiation?
14 A Off the top of my head, I'm not sure but, yes,
15 there are some, yes.
16 Q Can you name some for me?
17 A They're in these summaries.
18 Q You can look through them if you want.
19 A All right.
20 Q You might not want to get them too mixed up
21 because we're on 9, and we still need to go through the
22 rest.
23 A Well, I know there's -- here, Aitken, Leathar
24 and O'Hagan get young people who -- in their initial
25 interview -- the researcher's interview and ask them
35
1 whether they're aware of existing advertising for
2 cigarettes, and how much they like them. And then
3 follow them up a year or two or three -- a year or two
4 later, and they learn that those who are more familiar
5 with the advertising initially, ultimately -- even
6 though they have no greater intention to smoke at the
7 initial point of their interview, when they're
8 subsequently interviewed, those that had greater
9 interest in and awareness of, a liking for cigarettes,
10 advertising, end up more likely to smoke.
11 Q You're referring to page -- are you looking
12 over 189, a study referred to on page 189 of what's been
13 marked as Exhibit 14? Any other studies?
14 A There are other parallel studies. Another one
15 on this page, boys and girl who at baseline reported
16 cigarettes ads made them think they'd like to smoke.
17 Q Who is the author of that study?
18 A Armstrong.
19 Q Any others that you can think of or that you
20 can see as you look through Exhibit 14?
21 A Not right now.
22 Q Doctor, is it your opinion that there is a
23 causal relationship between awareness of a cigarette
24 advertising logo, a cigarette logo and smoking
25 initiation?
36
1 A These are associational. In social science
2 it's rare that we have causality, but there are

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3 sufficient -- sufficient associational relationships
4 that have been generated in a variety of very different
5 methods and contexts that would lead one to believe
6 that -- certainly have led the three summary bodies that
7 I have presented, the Surgeon General, the Food and Drug
8 Administration and the Institute of Medicine -- have led
9 these summary bodies to agree that there is in all
10 likelihood a causal relationship even though no single
11 study can in a medical sense be termed causal.
12 Q My question was whether it was your opinion
13 that there is a causal relationship?
14 A I believe that the sum total of the research
15 that has been generated suggests there is a causal
16 relationship.
17 Q Does this causal relationship exist as to some
18 familiarity with cigarette logos, or does it exist as to
19 familiarity with other logos and product initiation or
20 product use?
21 A I don't understand the question.
22 Q Is this a phenomenon that's limited to
23 cigarette logos?
24 A First of all, I'm referring more broadly to
25 advertising rather than limiting it to logos because
37
1 logos are linked to other aspects of the ad.
2 Q Let's limit ourselves for the moment to logos
3 because we've been talking about the red Marlboro
4 chevron, and we talked about how the awareness or the
5 familiarity with that chevron is at least associated
6 with smoking initiation. Is that correct?
7 A It's a -- as I indicated. It's a precursor,
8 an intervening step that leads to advertising (sic).
9 Q Let me reask the question just to make sure
10 that we're clear because I want to make sure I'm
11 getting -- that you understand my question, that I'm
12 getting a clear answer.
13 Is it your opinion that there is a causal
14 relationship between familiarity with cigarette logos
15 such as the Marlboro chevron and smoking initiation?
16 A Cigarette logos are one aspect of a sequence
17 of inputs that lead to smoking. They are a contributing
18 factor. They do not by themselves necessarily cause
19 people to smoke, but they are partly in a sense an
20 enabling factor.
21 Q What do you mean by an enabling factor, and
22 how is that different from a causal factor?
23 A I think the context in which causal usually
24 comes up is a medical analogy that -- we take two groups
25 of people. We inject one group of them with a certain
38
1 medicine or something that's being tested, and we see if
2 they get better or not relative to the other group.
3 If they get better, we say, wow, we understand
4 there's a causal relationship. There's a clear
5 differentiation. I injected them. They got better.
6 When it comes to social science, there usually
7 isn't a single injection. There are many contributing
8 factors. The familiarity with logos is one of those.
9 Q By "contributing factor" are you suggesting a
10 causal relationship?
11 A Is one that enables and -- enables an
12 ultimate -- an ultimate causal relationship. It's one
13 of the many forces that lead to cigarette smoking.

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14 Q Let's turn to the Marlboro Man. Again, you
15 might want to have Exhibit 9 in front of you because
16 that is the article that you referred to that launched
17 us on that discussion.
18 A Thus one of many, as I said when I introduced
19 it. There are others that refer to the same phenomenon.
20 Many textbooks. Many textbooks talk about this
21 phenomenon.
22 Q We are talking about low-involvement learning,
23 the article entitled Low-Involvement Learning: Memory
24 Without Evaluation. Correct?
25 A Correct.
39
1 Q How is the Marlboro Man relevant to that
2 theory?
3 A The Marlboro Man was -- was an omnipresent
4 figure in our environment, and as such it's become very
5 familiar. It's very comfortable for people, and so they
6 very quickly can have a telegraphed message without even
7 paying much attention to it.
8 Q What is the telegraphed message that you
9 believe people receive from the Marlboro Man?
10 A It's not just what I believe, but what I have
11 certainly read, that Philip Morris executives and
12 advertising personnel have wanted it to be --
13 Q Let me interrupt you and come back to that.
14 But my question went to your opinion. You are retained
15 as an expert witness in this case. I'm asking about
16 your opinion.
17 MR. PIUZE: Can I hear the question again?
18 (Record read as follows:)
19 "QUESTION: What is the telegraphed
20 message that you believe people receive from
21 the Marlboro Man?"
22 THE WITNESS: Part of why I believe is it's
23 corroborated by these executives, but I'll tell you what
24 I believe. And it's -- the Marlboro Man is a very
25 strong, virile, independent image that resonates -- and
40
1 resonated -- with the desire for young people to be
2 strong, independent and virile.
3 Q Anything else?
4 A It didn't stand alone. It built on decades of
5 cowboy movies, where the image was created that led
6 to -- since Hollywood cowboy movies were a Trojan horse
7 for this image. It had eight- and ten-year-old boys
8 ready and primed at twelve and fifteen and seventeen to
9 understand those images in very telegraphed quick ways.
10 Q Could you explain what you mean when you say
11 that cowboy movies were a Trojan horse for the Marlboro
12 Man campaign?
13 A I don't know the numbers, but large numbers of
14 cowboy movies and cowboy programs on television,
15 certainly through the 50's, made the cowboy image
16 prevalent. The strong, virile, independent, victorious,
17 successful person. And boys would have watched that.
18 Teenagers would have had that embedded somewhere in
19 their memories, such that the Marlboro Man did not enter
20 the stage -- did not drop from Mars. It picked up on
21 the image understood by these teenagers that had been
22 young boys and watching these programs.
23 Q When did the Marlboro Man enter the stage?
24 A I believe it was in the early 60's.

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25 Q You said your opinion was corroborated by
41
1 others. Who are you referring to?
2 A Again, looking at some of the documents that I
3 have reviewed, advertising executives working for
4 Marlboro in the 60's, and recently, more recently --
5 well, advertising executives working for Philip Morris
6 early in the 60's.
7 Q And you are offering an opinion as to what
8 they intended?
9 A It certainly seemed that they wanted to craft
10 a character that was appealing to young people. They
11 said so. Or that would not be -- if it was not directly
12 appealing to young people, would also be appealing to
13 young people, in the ways that I've stated such that
14 young -- young men in particular wanted to be virile,
15 independent, strong.
16 Q When you say documents you've reviewed, you're
17 talking about documents from the files of the tobacco
18 companies?
19 A Yes.
20 Q When did you review those documents?
21 A I reviewed some of them when I was first
22 deposed, and I've reviewed my lighted ones --
23 highlighted ones since then.
24 Q What do you mean by "highlighted"?
25 A From the Minnesota Medicaid case.
42
1 Q When were you first deposed?
2 A 1996, I think.
3 Q That was in connection with the Mississippi
4 attorney general case?
5 A Yes.
6 Q You reviewed some documents before your
7 testimony in that case?
8 A Yes.
9 Q Where did you get those documents?
10 A I was given them by Ness Motley, whom I worked
11 for.
12 Q That's the plaintiff's law firm in that case?
13 A Yeah. Yes.
14 Q Other than the stack of documents given to you
15 by Ness Motley, what other documents had you reviewed at
16 the time of your Mississippi deposition?
17 A I think that was it.
18 Q You also mentioned you received some
19 highlighted documents from the Minnesota attorney
20 general case?
21 A Just a series of excerpts.
22 Q A series of excerpts?
23 A Yes.
24 Q And where did you get that series of excerpts
25 from?
43
1 A I thought I had -- let me just look through
2 this and see if I don't have it here.
3 MR. LEITER: Do you want to take a minute and
4 go off the record so you can look through your
5 briefcase?
6 MR. PIUZE: Let's take a minute. Let's take
7 about three.
8 (Brief recess taken.)
9 BY MR. LEITER:

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10 Q Dr. Goldberg, before the break you were going
11 to take a look at -- a look through your briefcase for
12 the source of excerpts you reviewed from tobacco company
13 documents. Have you sighted something?
14 A Yes, actually, I think this is just got -- was
15 forgotten to be copied. It's Advocacy Institute, April
16 15, 1998, Recently Released Tobacco Industry Documents
17 Substantiate Pattern of Tobacco Industry Deception: New
18 Industry Public Relations Strategy Exposed.
19 MR. LEITER: Do you mind handing that to me.
20 Let's mark that, and we'll make a copy before you go.
21 Let's mark that.
22 (The document referred to was marked by
23 the CSR as Defendants' Exhibit 16 for
24 identification and attached to and made a part
25 of this deposition.)
44
1 BY MR. LEITER:
2 Q Dr. Goldberg, this document that we've marked
3 as Exhibit 16 is dated April 15, 1998. Is that about
4 the time you received it?
5 A No, I just recently received it, just a couple
6 of weeks ago.
7 Q From whom?
8 A Rick Pollay.
9 Q Did you ask Mr. Pollay -- Dr. Pollay to send
10 you materials?
11 A Yes, especially as regards recent cases. He's
12 been very active, and I realized he would be a good
13 source for this particular kind of information.
14 Q What else did you ask Dr. Pollay to send you?
15 A I was particularly interested in -- there's
16 another piece here, public relations, which he's done a
17 lot of work on the issue of public relations by the
18 tobacco industry over time and, as I say, more recent
19 comments out of more recent cases.
20 Q How many times have you spoken with Dr. Polely
21 in the last six months?
22 A Three or four.
23 Q All of them by telephone?
24 A I had dinner with him once about three months
25 ago, he and his wife and two other couples -- my wife
45
1 and another couple were friends as well as colleagues.
2 Q Did you talk any business during that dinner?
3 A Business only in an academic sense. He is
4 likely to send me a paper to review.
5 Q You mentioned that Dr. Pollay -- it's your
6 understanding -- referred the plaintiffs to you in this
7 case. Is that correct?
8 A Yes.
9 Q Had you suggested to Dr. Pollay that you would
10 be available to offer expert testimony in litigation?
11 A Not recently. I think he may just have a
12 general understanding I have an interest in this issue.
13 Q General understanding based on what?
14 A An acquaintance that goes back many years. I
15 understand too that his testimony may be called upon by
16 Mike. Is that correct?
17 Q Have you spoken to Dr. Pollay since that first
18 phone call you received from Ms. Weiss in connection
19 with this case?
20 A Only to ask --

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21 Q Just that one conversation?
22 A Yes.
23 Q How long was the phone call?
24 A Just long enough to tell him my need of the
25 material and to thank him for the reference.
46
1 Q What did you tell him you were looking for?
2 A I wasn't quite specific enough. He sent me a
3 whole bunch of stuff I wasn't interested in. It was
4 these things that I was particularly interested in.
5 Q These things meaning the two pieces that we
6 have marked in this case?
7 A That's right, and the focus on where I feel
8 that he's been particularly active in pursuing this as a
9 relatively unique academic -- the issue of public
10 relations, and more recently the statements out of
11 industry archives or industry documents.
12 Q Did you have any discussion with Dr. Pollay
13 during the conversation after you were retained in this
14 case about the areas of testimony you might be offering
15 in this case?
16 A No. I mean, we -- there wouldn't be any need
17 for it. He understands what I know, and I understand
18 what he knows.
19 Q Did he send you any transcripts of him in
20 prior cases?
21 A Yeah, but not what I was interested in.
22 Q What cases did he send you testimony from?
23 A I don't even know. There was so many there,
24 and I had no time. It was all in the last weeks before
25 I left.
47
1 Q If you were to stack up all the transcripts of
2 testimony that he sent you from prior cases -- his own
3 testimony, how tall would the stack be?
4 A The whole stack -- but there were mostly
5 articles, published articles was, like, two inches. I
6 don't know. Must have been one or two depositions.
7 Actually, I think I saw a deposition of his -- again, I
8 didn't read it. I read part of it from my early
9 involvement in the -- with the Philadelphia firm.
10 Q You've been retained by a Philadelphia firm in
11 connection with another tobacco case?
12 A Well, it hasn't gone very far so I don't know.
13 Q What testimony of Dr. Pollay's did you read?
14 A I didn't. Other than that small part of what
15 that other firm had given me.
16 Q Let's go back to our discussion about
17 documents from the companies that you have reviewed.
18 You've pointed to what we've marked as Exhibit 16.
19 Other than that, have you reviewed any documents from
20 the companies since your last deposition in 1996?
21 A Only as they are reported in the summary
22 documents that I've --
23 Q Such as Exhibit 16?
24 A And the broader summary ones that I referred
25 to earlier.
48
1 Q Have you ever asked for particular documents
2 from the companies that you would like to review?
3 A No.
4 Q Have you ever done any systematic review of
5 Philip Morris's advertising documents?

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6 A Original documents?
7 Q Internal documents.
8 A No.
9 Q Do you plan to review more documents, internal
10 Philip Morris documents, between now and your testimony?
11 A I might.
12 Q In what areas might you be reviewing
13 documents?
14 A I find their comments on their targeting of
15 young people to be particularly germane, as well as
16 their comments on the way they structure the images of
17 their advertising so as to be appealing to young people.
18 Q How will you go about locating those
19 documents?
20 A I'm not sure. I may simply go back again to
21 more recent summaries and look for references to them.
22 I have colleagues that I can ask.
23 Q More recent summaries such as the one from the
24 Advocacy Institute?
25 A That sort of thing, yes, and I also have
49
1 colleagues that I can ask.
2 Q What is the Advocacy Institute? Do you know?
3 A I don't know.
4 Q Do you know whether they are a fair and
5 impartial collector of documents?
6 A I have no idea.
7 MR. PIUZE: Fair and impartial in whose eyes?
8 THE WITNESS: Everything here is attributed
9 however. Date, person.
10 BY MR. LEITER:
11 Q You also mentioned the advertising slogan
12 "Call For Philip Morris." Do you recall that?
13 A Yes.
14 Q And how is that relevant to the theory that
15 we've discussed that was contained in Exhibit 9?
16 A Very much so. I never -- nobody ever told me
17 I was taking a test in the year 2001 when I heard those,
18 but I managed to pull it out of my brain nevertheless,
19 whether I want it there or not.
20 Q You recall it?
21 A Yes.
22 Q Much as you might recall other advertising
23 slogans?
24 A More so, because it was probably repeated more
25 often.
50
1 Q As much as you might remember a song that
2 you've heard frequently on the radio?
3 A More so, because it was repeated more often.
4 Q Even a song that you may not like?
5 A Right.
6 Q Is it your -- strike it.
7 Is it your opinion that the advertising slogan
8 "Call for Philip Morris" conveys a message about
9 smoking?
10 A It certainly underlines the name of the parent
11 company.
12 Q Other than that?
13 A I would have to go back and look at the
14 context in which it was raised. It wasn't just the
15 phrase. It was the context of the advertising.
16 Q What do you mean by the "context of the

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17 advertising"?
18 A There was this cute little guy that kept
19 calling it out, and it was a very catchy -- certainly
20 enhanced the reputation of the firm. And I've done work
21 to suggest that when the reputation of the firm is
22 enhanced, its products are enhanced. Then its
23 advertising is enhanced.
24 Q What time period was that advertising slogan
25 used?
51
1 A I believe it was back in the 50's.
2 Q Do you remember when it ended?
3 A No.
4 Q How old are you?
5 A 56.
6 Q Have you done any research on the effect of
7 cigarette logos on smoking initiation?
8 A I've done research on cigarette packaging and
9 logos are a part of that. I've done research on the
10 awareness of cigarette advertising, more broadly,
11 including, for example, billboards would fall into that.
12 Not specifically. And logos are part of that. So when
13 you study the effects of cigarette advertising, you're
14 studying logos in part.
15 Q My question was have you done any research
16 specifically on the relationship or the association
17 between cigarette logos and smoking initiation?
18 A As I mentioned, I think my research
19 encompasses that and never isolates it because that
20 reflects how logos are a part of a process and not the
21 isolated focus of the process.
22 Q What are the other components of the process?
23 A There's a typical hierarchy ranging from an
24 awareness of the product and its advertising, a
25 developing interest in it, an evaluation of it, the
52
1 trial of it and eventually adoption of it. It being the
2 product.
3 Q Does the theory that we've discussed apply
4 uniformly to all products, or is there something unique
5 about cigarettes?
6 A First of all, the theory is such that it can
7 be amended here and there, but it is a broad-ranging
8 theory, yes.
9 Q Applicable to all products?
10 A From time to time the sequence changes for
11 particular products, but it's, again, a broad-ranging
12 theory that applies to many products in many situations.
13 Q Is there anything unique about cigarettes that
14 impacts the applicability of the theory?
15 A There are many things that are unique about
16 cigarettes.
17 Q Not my question.
18 Is there anything unique about cigarettes that
19 impacts the applicability of the theory?
20 A Certainly the addictive nature of cigarettes
21 makes the link between trial and adoption a critical
22 one.
23 Q We're talking about a theory that links
24 advertising to initiation, aren't we?
25 A I forget the initial question.
53
1 Q Let's go back. We've been talking about the

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2 theory discussed in what's been marked as Exhibit 9,
3 which discusses an association between advertising and
4 logos and product initiation. Correct?
5 A The reason I brought in Exhibit 9 -- and as
6 I've mentioned, this is a phenomenon that is discussed
7 broadly in any textbook which I could have readily have
8 brought in -- is not to isolate or fixate on logos, but
9 to talk about the importance of familiarity of a
10 stimulus, whatever that stimulus is with regard to
11 persuasion and acceptance.
12 Q And the stimulus that we've been discussing is
13 partially logos, but in a broader sense advertising.
14 Correct?
15 A It could be billboards. Could be the package
16 of the cigarettes.
17 Q Now, my question is is there anything unique
18 about cigarettes as a product that impacts the
19 applicability of this theory?
20 A Insofar as the vast majority of smokers start
21 and adopt the product in their youth at a point in time
22 when they're particularly vulnerable to appeals to
23 provide them with vehicles to strengthen their
24 self-concept, self-identity, communication of that
25 identity to others, appeals to young people at that
54
1 time. Familiarity of a product, the effective
2 communication, telegraphic of that image, I think, does
3 make it unique.
4 Q Have you done any research on the association
5 between familiarity with the Marlboro Man and smoking
6 initiation?
7 A Broadly, and oddly enough in Asia.
8 Q Describe to me the research.
9 A In Thailand the more familiar Thai teenagers
10 are with Marlboro, the more likely they are to smoke
11 Marlboros. But it goes well beyond that. The more --
12 well, we looked at the context of whether they were
13 drawn to America as a country, and those that were
14 wanted to smoke more. And how did they learn about it
15 in America? It was through American movies and American
16 advertising. And when you probe them, it's in some
17 measure in American cigarettes, and among those Marlboro
18 stands out head and shoulders above the others that they
19 point to.
20 Q That research did not look at the Marlboro Man
21 or the Marlboro advertising campaign in isolation, did
22 it?
23 A It certainly asked them for their awareness of
24 Marlboro, and the Marlboro cowboy dominates the skylines
25 of these Asian cities.
55
1 Q My question was that research did not look at
2 Marlboro advertising in isolation, did it?
3 A I don't know what you mean by "in isolation."
4 Q You looked at a variety of factors in that
5 research, didn't you?
6 A Yes, but certainly Marlboro Man was one of
7 them.
8 Q And there were several others, weren't there?
9 A Yes, one or two others.
10 Q Such as?
11 A Their broader identification with America, but
12 as I said, I think those are linked.

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13 Q How did you measure their broader
14 identification with America?
15 A We asked them if they were teenagers who could
16 magically live in one country for a year and gave them
17 six choices. America was one. Japan, Hong Kong, et
18 cetera. Those that picked America would have been
19 identified as those who identified with America more
20 than the others.
21 Q Did you find that nonsmokers wanted to live in
22 America less?
23 A I have to go back and look at the details of
24 that. I really do not -- it's been a couple of years
25 since I looked at that. I believe what we did show is
56
1 that among those who were interested in America, we
2 certainly had a lot more people who smoked and who
3 wanted to smoke Marlboros.
4 Q You also looked at frequency of attendance of
5 America movies?
6 A Uh-huh.
7 Q You have to answer yes or no.
8 A Yes. Sorry.
9 Q You also looked at other criteria, didn't you?
10 A Those are all intertwined, yes.
11 Q But there were other criteria, weren't there?
12 A Yes.
13 Q Let's move to number 10. If you could
14 describe for me what that is and why you included it.
15 You might want to take a minute to put them back in
16 order.
17 We're looking now at Exhibit 10.
18 A I'm sorry. The lead author is Pollay, and
19 it's titled The Last Straw? Cigarette Advertising and
20 Realized Market Shares Among Youths and Adults.
21 Q Pollay is your friend, Dr. Richard Pollay?
22 A Colleague and friend, yeah.
23 Q Okay. Tell me what that article is about and
24 why you included it in the materials that you disclosed
25 today?
57
1 A This represents pretty clear linkage between
2 the amount of advertising done over a period of time and
3 the -- by different cigarette and brands -- brands, and
4 the share of market they have, and looks at both
5 teenagers and adults. And concludes that the link
6 between the level of advertising over time for various
7 cigarette brands and the brand preferences on the part
8 of teenagers -- that linkage is a lot stronger than it
9 is for adults.
10 Q And just so I understand, the theory is that
11 increased advertising expenditure increases market
12 share. Yes?
13 A That's one of its effects.
14 Q Is that the effect that was concluded in that
15 article?
16 A Yes.
17 Q Increased advertising increases market share
18 among youth as well as -- as well as adults. Is that
19 correct?
20 A It is much more powerful on youth than adults.
21 Q Does that study conclude that increased
22 advertising leads to increased smoking initiation?
23 A This study in itself, no.

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24 Q Have you studied the relationship between
25 increased advertising expenditures and smoking
58
1 initiation?
2 A I have certainly broadly read on the issue
3 including some specific -- the most important being a
4 macroanalysis of econometric studies that concludes that
5 there is such a relationship.
6 Q Are you thinking of particular studies?
7 A Franke.
8 Q Can you spell it?
9 A F-r-a-n-k-e. It's referred to in Pollay.
10 Q Any others?
11 A Being the macro, he summarizes and integrates
12 in the analysis many, many econometric analyses.
13 Q Let's move to the next article, which would be
14 number 11, Exhibit 11.
15 A Okay. Propaganda, Puffing and the Public
16 Interest. Pollay.
17 Q What is the conclusion of that alliterative
18 article, and why is it relevant to your opinions here?
19 A This is a historical review of the public
20 relations efforts of cigarette companies from the -- I
21 guess going back to the 50's through into certainly
22 beyond the -- into the 60's or 70's. Oh, it takes it up
23 to actually the -- just about 1990.
24 Q Simply an article reciting history as viewed
25 by Dr. Pollay?
59
1 A No, it's not his views. He cites, quotes,
2 from original sources as to the efforts made by the
3 cigarette industry.
4 Q I recognize that he cites to sources. My
5 question was does Dr. Pollay reach a conclusion in that
6 article?
7 A Frankly, I'm not sure. I read this for the
8 original sources.
9 Q Have you skipped over any part where
10 Dr. Pollay expresses an opinion or a conclusion?
11 A If he does express an opinion, I don't exactly
12 remember it. I know his general views so I would
13 imagine they are in line with those general views.
14 Q And you read that article as a source of
15 original material -- strike that. Original material is
16 not the right word.
17 You read that for its quotations from tobacco
18 company documents. Is that correct?
19 A And the TIRC and Hill & Knowlton and, in fact,
20 they simply corroborate what is, again, largely in some
21 measure present in, say, the Surgeon General's report.
22 Q My question was is that what you read this
23 article for?
24 A Yes.
25 Q Let's move on to the next one. This is
60
1 Exhibit 12.
2 A Loopholes and Lapses in the "1997 Tobacco
3 Agreement": Some Devils in the Marketing Details. This
4 is an article with me and Lynn Kozlowski.
5 Q What's the purpose of including that in these
6 materials?
7 A Actually, I'm not sure. I, again, indicate
8 that I have done some original thinking and work on the

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9 history of cigarettes and young people and wanted to
10 contribute when that -- when the federal settlement was
11 still in the works and felt that the settlement in some
12 ways was lacking and in particular was concerned. And I
13 think this was why I included it because it did not
14 recognize the power of imagery, even in adult magazines,
15 which would have been left in -- they're still left in
16 play to spill over to young people.
17 Q Have you been asked to offer opinions in this
18 case about the federal settlement or any other
19 settlement of a lawsuit involving tobacco?
20 A I don't understand your question.
21 Q Have you been asked to offer an opinion in
22 this case about that proposed federal legislation?
23 A Not directly.
24 Q Indirectly?
25 A As I said, the reason that it's here is that
61
1 there was some issues that carry over into any
2 discussion of cigarettes and their influence on young
3 people or adults for that matter.
4 Q Have you been asked to offer any opinion in
5 connection with any settlement the tobacco industry has
6 reached in a lawsuit?
7 A No.
8 Q What's the next document, which would be
9 Exhibit 13, I believe?
10 A Growing up Tobacco Free is the name of the
11 book. It's by the -- it's produced by the Institute of
12 Medicine, and it's the Chapter 4 on tobacco advertising
13 and promotion.
14 Q Who wrote Chapter 4?
15 A They don't identify separate authors for
16 separate chapters.
17 Q Were you involved in that book in any way?
18 A No.
19 Q Did you read that Chapter 4?
20 A Yes.
21 Q What was the purpose of your including that in
22 the materials here?
23 A It's -- it represents a good summary, again,
24 of the acknowledged literature and summary of the
25 effects of cigarette advertising on children.
62
1 Incidentally, this is where my copy for you was buried.
2 Q Terrific. At the break we'll substitute the
3 copy of 16 for the original that we marked.
4 Okay. Let's move to number 14. What is that?
5 A It's the Surgeon General's report, 1994, on
6 tobacco and youth. I think that's the title.
7 Preventing Tobacco Use Among Young People. And it's a
8 chapter -- I'm not sure which chapter. The chapter
9 that's titled The Role of Advertising and Promotion in
10 the Marketing of Tobacco Products.
11 Q Do you know who wrote that chapter?
12 A No.
13 Q Were you involved in any way in the
14 preparation of that chapter?
15 A No.
16 Q Have you been involved in the preparation of
17 any Surgeon General's report?
18 A No.
19 Q Are you involved in the review of any Surgeon

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20 General's report --
21 A No.
22 Q -- prior to its release?
23 Let's go off the record for a second.
24 (Discussion off the record.)
25 (Whereupon, at 12:45 P.M. the proceedings
63
1 were adjourned for the lunch recess.)
2
3
4
5 (Whereupon, at 1:40 P.M. the proceedings
6 were reconvened.)
7 BY MR. LEITER:
8 Q Dr. Goldberg, I'd like you to take a look at
9 what's been marked as Exhibit 15, an expert witness list
10 in this case. Have you seen that before?
11 A I don't think I've seen this document.
12 Q Take a look at page 7, paragraph 8.
13 A Oh, yeah, I have seen this.
14 Q That begins "Dr. Goldberg may testify".
15 A I saw this.
16 Q Take a look at that paragraph. Did you see
17 that paragraph before?
18 A Yes.
19 Q Did you write that paragraph?
20 A This probably came about as a result of my
21 discussion, however brief, with Dina Weiss.
22 Q Did you draft this or did somebody else?
23 A I think they drafted it.
24 Q Did you review it?
25 A Just this morning.
64
1 Q Could you tell me if there's anything in this
2 paragraph that you disagree with?
3 MR. PIUZE: That's an interesting question to
4 which the form is objected, seeing as it says "may."
5 THE WITNESS: I agree with it.
6 BY MR. LEITER:
7 Q Do you think there's any possible way this
8 could have been drafted more broadly -- I'll withdraw
9 that question.
10 All right. Let's go through it and see what
11 we can make of it. Let's start with the first clause,
12 "Dr. Goldberg may testify about advertising and
13 marketing". That's obviously a very broad statement.
14 Would you agree?
15 A Yes.
16 Q Do you have an understanding as to what you
17 may be asked to testify about with respect to
18 advertising and marketing?
19 A How advertising has influenced adults and
20 youth to smoke, how targeting of specific segments
21 represents effective marketing strategy. Those are two,
22 not necessarily all, of the aspects of advertising and
23 marketing.
24 For example, I've done some work on packaging.
25 That's an aspect of marketing. It overlaps with --
65
1 interacts. We now call it integrated marketing
2 communications. Packaging represents a form of
3 marketing communications. I've done work on that. I
4 think that's an important aspect of -- one aspect of

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5 what induces young people to smoke, the badge value of
6 the package. How it integrates with the advertising.
7 Q How does influencing -- how does advertising
8 and marketing influence adults and youth?
9 A That's a very, very broad question.
10 Q I know, but you gave me that phrase in
11 response to my question about what you would be saying
12 about advertising and marketing. So I'm using that same
13 phrase.
14 A Advertising is a persuasive vehicle that in
15 the cases I've mentioned earlier, young people, holds up
16 attractive images, symbols, life styles that these young
17 people identify with, particularly as they are
18 vulnerable with regard to their self-identities, forming
19 self-identities.
20 Teenagers tend to feel they're on a stage with
21 everyone looking at them, and they in a sense fumble
22 around for the right kind of way to present themselves,
23 uncertain as they are, they reach out for props. It
24 might be a baseball cap on backward. It might be the
25 right kind of cigarette with the right kind of cigarette
66
1 pack endorsed by the right kind of image that helps them
2 feel secure in how they're representing themselves to
3 others. It's the advertising that holds out that image,
4 that they aspire to, that they feel they identify with
5 and want to identify with.
6 And so it can be a very powerful vehicle for
7 adults as well as youth, but particularly for youth who
8 are so vulnerable, as I've explained.
9 As I just mentioned, it doesn't have to be
10 limited to advertising. It could be the packaging
11 that's linked to it. It can be the promotion of
12 cigarettes. It can be the insertion of cigarettes into
13 motion pictures. There's a broad range of advertising
14 in promotion strategies that have been rather effective
15 in building a very successful industry.
16 Q Does advertising and marketing influence
17 people to buy products they were not otherwise inclined
18 to buy?
19 A The range of products in our society that we
20 absolutely need relative to what we buy is rather small.
21 We all buy lots of products that we don't need, and we
22 learn about them through advertising or are induced to
23 buy them in part through advertising. There's no single
24 magic button that advertising pushes. It is part of a
25 process.
67
1 Certainly advertising has played a big role in
2 shaping our lifestyles and inducing people to become
3 interested in trying products.
4 Q My question didn't really go to whether people
5 buy things they may not need. You may not need that
6 Diet Coke, for example. My question was whether
7 advertising induces people to buy products they don't
8 otherwise want.
9 A Well, you have to define "needs" and "wants"
10 then because I don't understand that.
11 Q You don't understand the difference between
12 needing something and wanting something?
13 A I thought I answered it with the previous
14 question, but you're saying I didn't.
15 Q I'm just asking a follow-up question. I'm not

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16 commenting.
17 A I'm trying to distinguish between my effort to
18 answer it and your substantive question.
19 Q Why do people start smoking?
20 A They start smoking because it's a sign and
21 form of adult maturity, because it's a form of asserting
22 their independence along the way to adulthood.
23 Cigarettes can represent that kind of symbol because of
24 how they've been portrayed in advertising and in the
25 media.
68
1 They smoke -- young people -- and we're
2 talking about young people because the vast majority of
3 people start to smoke before 18 or 19. They start to
4 smoke in some sense to fit in with their peers, who are
5 equally struggling to find the right prop, and all of
6 them gravitate toward the same props to feel comfortable
7 to one another, the props that they've all learned
8 simultaneously to identify from the media and from
9 advertising.
10 Q Does advertising and marketing cause smoking
11 initiation?
12 A It certainly plays a role in leading people to
13 start to smoke.
14 Q What other things play a role in leading
15 people to start smoking?
16 A Well, I just said it's not as if -- there's no
17 robot-like theory of advertising. That's long ago been
18 discarded. We don't look at a message and say, okay.
19 Sometimes I think implicit in the word cause is that,
20 okay, I've just looked at an ad. Therefore, I will go
21 do what it says. We're not robots, and advertising
22 agencies, advertising -- advertisers know that we're not
23 robots.
24 So it operates -- advertising operates in
25 conjunction with other forces. One of those being peer
69
1 influence. Young people, as I've just said, are anxious
2 to strike off on their own in one sense, away from the
3 nest of their parents, but also rather in a sense
4 fearful of being off alone and need the security of
5 their close friends and peers.
6 So how do you strike that balance? You rebel
7 against some of the things that your parents stand for,
8 and you try and identify with some of the things your
9 friends stand for. How did they learn to stand for
10 certain things, and you certain things that project a
11 certain image for them? They learned by looking around
12 on their radar scope, and they are at the same time
13 worried about how their friends will understand them and
14 accept them.
15 So we have a kind of fragile set of people,
16 looking around for the right cues, the right props.
17 That vulnerability is the key to the success of
18 advertisers who hold up the prop and say, hold on to
19 that cigarette, and you too will look like the Marlboro
20 Man. Each person uncertain of how the other -- each
21 young person uncertain of how the other will appear,
22 gains that amount of certainty by saying, well, everyone
23 else is going to check in with this same symbol and it
24 seems to be the right symbol.
25 Q You've identified advertising and marketing
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1 and peer influence as factors that play a role in
2 leading people to start smoking. What other factors
3 play such a role?
4 A Statistically, parents do.
5 Q In what sense?
6 A Well, when parents smoke, they don't represent
7 a brake on young people that want to smoke, but they
8 never -- I can't imagine that they ever represent the
9 people that young people want to emulate. Young people
10 want to strike off on their own with their own brands
11 and distinguish themselves from their parents. So it
12 represents an absence of a brake rather than a
13 motivational factor.
14 Q Is it your opinion that parental smoking plays
15 a role in leading people to start smoking?
16 A It represents in some sense an absence of a
17 brake.
18 Q What does that mean?
19 A That these parents are less likely to -- it
20 may mean a whole range of things, but most typically it
21 would be that these parents are less likely to admonish
22 the young people -- their children for smoking. But
23 that's reactive. That's not what induces people to
24 smoke.
25 Q So you don't believe that parental smoking
71
1 induces someone to start smoking?
2 A In the sense that I don't think there are very
3 many 14 year olds that look to their mom and say, she
4 smokes, I want to emulate her.
5 Q In any other sense?
6 A As I said, parents do not -- those parents
7 that smoke will not represent the same kind of reactive
8 brake on their smoking children.
9 Q What other factors play a role in leading
10 people to start smoking?
11 A It's not the taste. It's not the product per
12 se which makes, as you asked before -- cigarettes are
13 unusual in that regard. If candy bars tasted that bad,
14 nobody would be eating candy bars on the first taste.
15 Q Are there any other factors in your opinion
16 that play a role in leading people to start smoking?
17 A I think those are the overwhelming forces.
18 Q Is it correct -- and please correct me if I
19 misunderstood you -- that you've really identified two
20 forces that play a role in leading people to start
21 smoking, advertising and marketing and peer influence.
22 Is that correct?
23 A No, really one force. Advertising and
24 advertising working through peers.
25 Q In your opinion, advertising is the
72
1 predominant factor in inducing people to start smoking.
2 Is that correct?
3 A Yes.
4 Q Can you point me to scientific studies that
5 help form the basis of your opinion?
6 A Yes.
7 Q Please do.
8 A One we talked about this morning. Very
9 clear-cut study.
10 Q Do you remember the name of the author?
11 A Aitkin. Where very young people -- I believe

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12 they're 10 to 12. You ask them if they intend to smoke.
13 They say no. You asked them about their awareness of
14 smoking -- of advertising. Those that are aware, even
15 though they tell you they don't intend to smoke, a year
16 later are more likely to intend to smoke than they
17 did -- than they did indicate a year earlier. Awareness
18 of advertising leads to a higher intention to smoke,
19 even though that intention to smoke wasn't there
20 initially.
21 Q Any studies other than the Aitkin study?
22 A Yes. There are a series of studies, one of
23 which I've presented here.
24 Q Take your time.
25 A It's number 8. Aloise-Young, Hennigan and
73
1 Graham. "Role of Self-Image and Smoker Stereotype"
2 very clearly suggests that where young people see
3 themselves and see smokers as being cool, tough,
4 sociable, smart, where there's a very close similarity,
5 where there's a high similarity between self-image of
6 the young person and their perception of the image of a
7 smoker, they're a lot more likely to smoke than where
8 that similarity is not there.
9 That is the goal of much of cigarette
10 advertising is to structure this lifestyle, this image,
11 this way of presenting yourself. And when young people
12 believe that they can -- that they have those
13 characteristics, they want those characteristics, that
14 smokers have those characteristics, latching on to that
15 cigarette helps solidify those characteristics.
16 It's a risk factor, recognizes a risk factor
17 that, if you can induce people to want those
18 characteristics, feel they have those characteristics,
19 can get closer to those characteristics -- tough,
20 masculine, virile, social, smart. Advertising creates
21 those images, links -- links cigarettes to those images,
22 and in that process holds out the goal for these
23 vulnerable young people, looking for their
24 self-identity, to say, I can come closer to it through
25 this cigarette. It's a high-risk factor that's created
74
1 by advertising.
2 That's another, but I can go on.
3 Q I apologize for interrupting before. Is it
4 your opinion that that is the goal of all cigarette
5 advertising?
6 A No. Certainly image advertising, and that's a
7 vast part of it.
8 Q What's the basis of your opinion that that's
9 the goal of image-based advertising?
10 A Advertising is intended to largely either
11 convey facts or convey impressions. If you're not
12 conveying facts -- and there are very few precious facts
13 in a Marlboro cowboy ad -- you're conveying impressions.
14 Q And my question was what is the basis for your
15 conclusion that the goal of such advertising is to
16 induce young people to smoke?
17 A I'm sorry. Could you read the question back?
18 (Record read.)
19 THE WITNESS: Well, again, first, there are a
20 number of articles attributed to advertisers and
21 executives saying that we must get young smokers if
22 we're going to get smokers. People don't start to smoke

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23 hardly at all after age 20. So who are you advertising
24 to. There are all kind of documents that point to 18 to
25 25 year olds.
75
1 There's some that talk about -- I've seen
2 project 16 where -- that's called 16 because they were
3 talking about 16 year olds. They are -- the advertisers
4 and cigarette companies are fully aware of the imagery
5 associated with the cowboy, and the way that that maps
6 on to the needs and vulnerabilities and characteristics
7 that young people strive for. The masculinity, the
8 vulnerability, independence, rebelliousness, the
9 standing apart from authority.
10 There's an understanding in terms of the
11 content of the ads and how they map on to what young
12 people are looking for. There is a document saying that
13 we need those 16 year olds in order to keep our market
14 for cigarettes alive. You could hardly expect these
15 advertisements to be targeted at brand-switchers because
16 there are hardly any brand-switchers. There's less than
17 10 percent of smokers that switch brands and less than 7
18 percent that switch out of company. So you don't spend
19 all that money for the 7 percent that you're worried
20 about losing.
21 Q Do you have any --
22 A You spend it because you know you need a flow
23 of new initiates.
24 Q Do you have any other basis for your
25 conclusions about the goal of cigarette advertising
76
1 other than your review of the company documents and the
2 portions of company documents that we talked about
3 earlier?
4 A Any other basis for what?
5 Q Your conclusions about the goals of cigarette
6 advertising other than your review of the company
7 internal documents and the portions of company internal
8 documents that we've talked about.
9 A I mentioned the -- an analysis of the contents
10 of the ads, the nature of the way they map in to the
11 only initiates that they can find. It's a demographic
12 analysis. If you need new smokers and the cigarette
13 industry needs new smokers all the time, the only place
14 they can find them is people under 18 or 19.
15 Q Have you conducted such a demographic
16 analysis?
17 A Not personally, but I've read a great deal
18 about it.
19 Q You were pointing me to scientific studies
20 that support your opinion that advertising is the
21 predominant factor in inducing people to start smoking,
22 and you've identified two. Do you have any others to
23 identify?
24 A Yes. Certainly the Pollay econometric one is
25 an example of how unlike adults -- or far more than
77
1 adults -- young people's preferences map on to the share
2 of voice that advertisers have.
3 Q Any other studies --
4 A Young people -- not just Pollay's study, but I
5 believe one or two related studies, but young people
6 gravitate to the three top advertised brands even in
7 the -- early 1990's when we had this recession, and

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8 adults started drifting away. I think something like 40
9 percent of adults were smoking generic cigarettes.
10 Young people didn't. As little cash as they have, they
11 are so drawn to the major advertised brands. They
12 still -- something on the order of 80 percent of them
13 gravitated to the three major brands. So they'll pay
14 for that image.
15 There's a study that shows that -- you offer
16 them Marlboro cigarettes. You say this is the exact
17 same Marlboro, but we're going to give it to you in a
18 plain package. I've done some work on plain packaging.
19 They won't take them at half the price or free. I think
20 it was half the price. They want the image. They need
21 the image that's been created by advertising. They map
22 on to it. When advertisers advertise those major
23 brands, it's the young people who respond more than
24 adults.
25 Q Can you identify the study that you just
78
1 referred to in your last answer?
2 A It's in one of the summaries and -- it will
3 take a while. It will take a while. I'm not sure I
4 have the right document. Can I get back to you with
5 this?
6 Q You can get back to me on it.
7 Can you identify any other studies that
8 support your conclusion that advertising is the
9 predominant factor in inducing people to start smoking?
10 A Yes. There are a large number of studies
11 looking at different countries, and when promotion for
12 cigarettes is regulated either entirely out of the
13 picture or partially out of the picture, the decrease in
14 advertising and promotional efforts on the part of the
15 cigarette company, when regulated, leads to a decrease
16 in the smoking on the part of young people.
17 Q Do you remember what countries we're talking
18 about?
19 A One of the clearest examples is Norway.
20 Q Was smoking advertising regulated or banned in
21 Norway?
22 A It was banned, I believe.
23 Q What affect did that have on consumption?
24 A Young people, I believe, 15 to 17, both boys
25 and girls, dropped by eight or nine percent each. And
79
1 this has been noted across, in one study, five
2 countries, and another study 33 countries, that the
3 relationship to the degree advertising is -- advertising
4 and promotion is carefully restricted -- going across
5 these countries, some restrict it more; some restrict it
6 less -- the nature of the restrictions link to the
7 subsequent level of youth cigarette smoking.
8 Q So the stronger -- the greater the
9 restriction, the greater the reduction in consumption.
10 Correct?
11 A By youth. Now, in general there's not a
12 perfect relationship.
13 Q Can you think of any other countries where
14 smoking -- cigarette advertising was banned?
15 A As I said, this one study by New Zealand
16 looked at an array of countries, and there's this
17 relationship. But the clearest one is, like I say,
18 Norway. I forget the specific countries that were -- in

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19 the five-country one. This is a British report, S-M-E-E
20 report. There were some Scandinavian countries. Canada
21 and Britain, I believe.
22 Q Is the effect consistent among all of these
23 countries, to your recollection?
24 A Well, again, I don't know what you mean by
25 "consistent."
80
1 Q That banning of advertising causes consumption
2 to go down.
3 A The issue is that when you say "ban," there's
4 sometimes partial bans and --
5 Q Let's take it one at a time. Total bans.
6 A Where there's a total ban there's been an
7 effect of decrease.
8 Q In consumption?
9 A As my understanding is, it is the relationship
10 between -- again, across these 33 countries, for
11 example, when there is a high level of restriction,
12 there is a noticeable reduction. Where there's less
13 restriction, there's perhaps no reduction.
14 I can cite Canada as an example
15 because although at one point there was an advertising
16 ban, you had ways of circumventing it, and so there was
17 less than a great effect.
18 Q What happened to consumption in Canada during
19 the advertising ban?
20 A I don't think there was a whole lot of effect.
21 I haven't totalled the numbers exactly, but there were
22 too many ways of circumventing.
23 Q Such as?
24 A Price. There were all kinds of cigarettes
25 smuggled back into Canada at a very low price. In fact,
81
1 this is maybe a case in the courts, but cigarette
2 companies have been charged with facilitating that
3 smuggling.
4 Q Doesn't that suggest that price, not
5 advertising, is the predominant factor affecting smoking
6 consumption?
7 A No, because these are still branded. My hunch
8 is that they were generic. These kids would not be as
9 interested.
10 Q But they were branded in a country that was
11 not permitting advertising of the brands. Correct?
12 A I've done a lot of work on cigarette packaging
13 in a country that at the time ostensibly had banned
14 advertising, and the packages are a form of advertising.
15 And we documented pretty clearly a very effective part
16 of advertising.
17 The colors of the -- just as we talked
18 previously about the Marlboro red and Marlboro chevron,
19 the colors of the cigarette companies, which were
20 carried into the advertising that they were permitted,
21 for example, the ongoing tennis tournaments and jazz
22 festivals, et cetera. When they advertise those, and
23 they use those colors, and those colors were then mapped
24 on to the cigarette packages -- integrated marketing
25 communications is a phrase that is very meaningful --
82
1 it's an integrated set of stimuli.
2 So what was lost was, yes, the direct
3 advertising images. What was still there was all kinds

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4 of ways of circumventing and maintaining those images.
5 Q Such as on the packs of cigarettes?
6 A Yeah. Of course, it's only been two or three
7 or four years, and so people still remembered the
8 images.
9 Q What other ways, in your opinion, were there
10 to get around the ban other than having branding on the
11 packages?
12 A As I said, using the colors. Don't forget,
13 we're talking about only three, four -- the ban was in
14 effect for only a couple of years. So people could
15 readily look at a color, just as I might look at the
16 Marlboro chevron and conjure up all the images that I
17 can recall from three, five, and eight years ago.
18 Q What's the biggest selling cigarette in the
19 United States today?
20 A Marlboro.
21 Q Any particular type of Marlboro?
22 A I think it's Marlboro Light now, which is part
23 of the problem because they've convinced everyone that
24 light is healthy, and it isn't.
25 Q Do you have any expertise in the health risks
83
1 of smoking?
2 A How do you define --
3 Q Are you a medical doctor?
4 A No.
5 Q Are you an epidemiologist?
6 A No.
7 A I have worked closely with, as I mentioned,
8 Lynn Kozlowski, who is the chairman of the biobehavioral
9 health department, co-author and worked closely with him
10 and learned a great deal from him about the health
11 risks.
12 Q Do you consider -- strike that question.
13 Is it your understanding that you're going
14 to offer opinions in this case about the health risks of
15 smoking?
16 A I'll offer an opinion as to how young people
17 and adults have been induced to ignore those health
18 risks by advertising.
19 Q My question was do you plan to offer an
20 opinion about what the health risks are?
21 A I understand what the health risks are, yes.
22 Q My question was do you plan to offer an expert
23 opinion on that?
24 A Depends what you mean by that. I can suggest
25 to you -- I will talk about how advertising has not
84
1 focused on them. To the contrary, serves to lead people
2 away from thinking about health risks.
3 Q That's not my question. My question was do
4 you have an opinion on what the health risks of smoking
5 are?
6 A Yes.
7 Q Is that opinion -- is that an opinion you
8 intend to offer in this trial?
9 A Only as it relates to how advertising has led
10 people away from thinking about them.
11 Q Is it your opinion, Doctor, that Mr. Boeken
12 began smoking because of cigarette advertising?
13 A Yes.
14 Q What's the basis of that opinion?

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15 A Reading his deposition and my understanding of
16 how the process works in general and mapping the two
17 together.
18 Q Is it your opinion that Mr. Boeken did not
19 quit smoking because of advertising?
20 A In part.
21 Q Can you explain what you mean by that?
22 A Yes. I think he was, as so many today,
23 induced into smoking light cigarettes in the false
24 belief that these were healthier, safer.
25 Q What's the basis for your opinion that
85
1 Mr. Boeken was induced to smoking light cigarettes
2 because of a belief about their relative harmfulness?
3 A His deposition.
4 Q Do you recall what it is he said in his
5 deposition that forms your opinion?
6 A Not verbatim, but yes.
7 Q Explain to me what you do recall.
8 A That he was -- that they felt milder. They
9 felt safer because they felt milder, and somehow that
10 that was in a sense a compromise for him.
11 Q Other than what Mr. Boeken said in his
12 deposition, do you have any other information about
13 Mr. Boeken that forms -- helps form the basis of your
14 opinion as to why he started smoking?
15 A I'm sorry. Other than what?
16 Q Other than your review of his deposition
17 testimony, do you have any other information about
18 Mr. Boeken that is part of the basis for your opinion
19 about why he started smoking?
20 A As I've said, insofar as his case fits into a
21 broad pattern, and I understand the broad patterning and
22 have been a student of the broad patterning of
23 smoking --
24 Q My question was information about Mr. Boeken.
25 Do you have any other information about Mr. Boeken other
86
1 than your review of his deposition testimony that is
2 part of the basis for your opinion?
3 A Well, for example, I know how old he is and
4 that makes a difference as to how he fits the pattern of
5 historical events.
6 Q Anything else?
7 A I know that he was a typical teenager growing
8 up in the 50's for example.
9 Q I'm asking you for the source of information.
10 Do you have any information other than what you read in
11 his deposition that forms your opinion or is part of the
12 basis of your opinion about why he started smoking?
13 MR. PIUZE: He's been answering the question
14 continuously, and by body language and gestures you're
15 sort of telling him he hasn't. I think he's been
16 answering.
17 MR. LEITER: I'm not making body gestures or
18 intending to make body gestures.
19 Q Can you answer the question?
20 A I bring to bear an understanding of the broad
21 patterns of how and why people smoke, especially young
22 people. Mr. Boeken's specific example fits into those
23 broad patterns.
24 Q In your opinion, does tobacco advertising
25 convey a health message?

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87
1 A Yes.
2 Q What message is that?
3 A Well, first of all, when you said "tobacco
4 advertising" --
5 Q I mean cigarette advertising?
6 A But even that, I mean, there's all kinds of
7 different cigarette ads. So --
8 Q In your opinion, does the Marlboro Man
9 campaign convey a health message?
10 A Many times, yes.
11 Q What do you mean "many times"? In what
12 instances does it?
13 A The broad campaign -- and I can't speak to
14 each and every ad, but the broad campaign presents very
15 healthy, virile men, doing very healthy, outdoor things
16 in pristine situations that are then associated over and
17 over and over again hundreds of times a month across the
18 years. That association under peripheral,
19 low-involvement situations leads to a transference where
20 the cigarette adopts that profile.
21 That's the intention of advertisers, to give
22 their product a lifestyle, a set of characteristics that
23 are embodied in the same kind of patterning that people
24 look for.
25 Let me just contrast it this way. If you want
88
1 to know whether they convey a health image, imagine if
2 what was portrayed over all of these decades of the
3 Marlboro Man was the Marlboro Man dying on a lung -- on
4 an oxygen machine, which they now have a counter ad for.
5 If that was the image associated alongside of the
6 Marlboro cigarette, over and over and over again, you'd
7 have a very different picture.
8 Well, the picture of health that is drawn is a
9 virile man, not the dying man with an oxygen machine.
10 Repeat that over and over again in pristine situations.
11 Not in hospital beds. Not in smog-polluted places.
12 Yes, it conveys by association a picture of
13 health over and over again.
14 Q Your disclosure on Exhibit 15, I believe it
15 is, also says you may testify about consumer belief and
16 expectation. What testimony do you intend to offer
17 about consumer belief and expectation?
18 A Consumer beliefs are those characteristics
19 that young people come to believe are associated with
20 smokers, and that they want and expect that they will
21 get. So, in fact, I mentioned that there was a parallel
22 study. I believe the author of that, the lead author of
23 that is Chiasson, something like C-h-i-a-s-s-o-n,
24 Chiasson. Where, once again, you have people that say,
25 look, my ideal kind of person is tough and rough and
89
1 virile and masculine, sociable. That's what I want, and
2 I see smokers as having that.
3 Q Do you have -- do you plan to testify about
4 consumer belief and expectation about the health risks
5 of smoking?
6 A Yes, to the extent that people, young people
7 are induced to believe that the benefits are great and
8 the down side is minimal, that addiction is not a
9 problem, that success -- that what you get with
10 cigarettes is success and romance and independence, and

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11 there's not much of a warning about addiction. You get
12 the CEO of Philip Morris saying, we shouldn't have
13 targeted 16 year olds.
14 Adults, on the other hand, are not given
15 adequate information about, for example, how vents,
16 invisible vents, that are then blocked by fingers or
17 lips, turn what supposedly is a light cigarette into a
18 regular cigarette and make them equally dangerous to
19 health. Filters are an illusion. Filtered cigarettes
20 have no greater protection from heart disease for the
21 smokers than regular cigarettes.
22 Q Are you on expert on cigarette design?
23 A I work with one -- somebody who is.
24 Q But that person is not designated an expert
25 here, is he?
90
1 A He's taught me a great deal.
2 Q Do you have a degree in cigarette design?
3 A No.
4 Q Did you ever design a cigarette?
5 A No.
6 Q Did you ever study cigarette design?
7 A No. Only at the knee of my colleague.
8 MR. PIUZE: Is there a degree in cigarette
9 design?
10 BY MR. LEITER:
11 Q Are you a biologist?
12 A No.
13 Q You're a physicist?
14 A No.
15 Q Are you a chemist?
16 A No.
17 MR. PIUZE: Vegetarian?
18 THE WITNESS: Yes.
19 BY MR. LEITER:
20 Q Are you an epidemiologist?
21 A No, but studied patterns of demographics from
22 a perspective of marketing research.
23 Q Are you a statistician?
24 A Have done a great deal of statistical work.
25 Q Do you have a degree in statistics?
91
1 A No.
2 Q Do you have degree in biostatistics?
3 A No.
4 Q Did you ever study molecular biology?
5 A Yeah, long time ago -- no.
6 Q You mentioned the CEO of Philip Morris
7 testifying that he wished the company hadn't targeted 16
8 year olds?
9 A Yes.
10 Q Which CEO?
11 A Geoffrey Bible.
12 Q What testimony are you referring to?
13 A "Well, I am ashamed of this. I'm very sorry
14 about that" --
15 Q You're reading from exhibit what?
16 A 16.
17 MR. PIUZE: Just take a breather for a second.
18 When you read that fast, you almost broke her hand, and
19 she's got to be accurate.
20 MR. LEITER: The witness is now reading from
21 Exhibit 16. Go ahead.

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22 THE WITNESS: This is a quote. "If that were
23 the case, I would" -- I'm sorry. Well, "I am ashamed of
24 this. I am very sorry about that." Philip Morris CEO
25 Geoffrey Bible, testifying in Minnesota's Medicaid suit,
92
1 March 3, 1998 responding to several studies Philip
2 Morris conducted on the youth market in -- in the
3 1960's."
4 Another one. "I'm ashamed of that. I don't
5 like to see something from the company talking about
6 16-year-olds. We do not market cigarettes to underage
7 people." Philip Morris CEO Geoffrey Bible, testifying
8 in Minnesota's Medicaid suit, March 2, 1998, responding
9 to a 1969 internal Philip Morris report about why
10 16-year-olds start smoking.
11 BY MR. LEITER:
12 Q Now, Dr. Goldberg, have you read the rest of
13 Mr. Bible's testimony?
14 A No.
15 Q Did you read any other portions of his -- of
16 Mr. Bible's testimony other than those segments that you
17 just read?
18 A No.
19 Q Did you actually read the quotation -- excuse
20 me. Strike that.
21 Did you read the questions themselves that
22 elicited those answers?
23 A No.
24 Q We're done talking about that exhibit for now.
25 According to your disclosure, you also may
93
1 testify about the history of cigarette advertising and
2 marketing. What is it you plan to say about the history
3 of cigarette advertising and marketing?
4 A What we have been saying, that historically
5 this has been how cigarette advertising has developed,
6 that when the issue of health became salient, prominent
7 in the mid 50's on through the early 60's, there was a
8 thoughtful effort to move away from any hint of verbally
9 talking about health and present pictures of health. As
10 we've talked about, these vivid images of virile people
11 in pristine situations, successful people, sociable
12 people in attractive, pristine situations. So that was
13 a shift historically.
14 Historically, how through the 50's and 60's,
15 the cigarette companies dominated some major radio
16 programs and then television programs that were
17 disproportionately tuned in to by young people. There
18 is evidence that -- the fact that there is a
19 relationship between the percentage of young people in
20 the audience and the share of -- the extent to which
21 cigarette advertisers selected those programs.
22 When cigarettes -- cigarette advertising was
23 banned -- eliminated from radio and TV, the level of
24 cigarette advertising in magazines increased
25 dramatically. And in magazines that appealed to young
94
1 people, the images that we talked about, again,
2 successful, strong, virile, masculine, athletic people,
3 were portrayed in relatively greater intensity or
4 frequency in some of the magazines that appealed
5 disproportionately to youth than to those that did not.
6 An element of history has been the development

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7 of would-be elements of the cigarette and associated
8 marketing to convince existing cigarette smokers not to
9 abandon cigarettes. The light cigarettes, the fact that
10 somehow filters matter, the fact that light cigarettes
11 are indeed light as much as light peaches might be light
12 relative to sugared peaches.
13 This is clearly -- people understand the
14 risks, believe the risks. The vast majority of people
15 believed the risks associated with light cigarettes to
16 be less and experts believe that they are not. So that
17 has been a trend to highlight the value of light
18 cigarettes. Keep existing people smoking.
19 Q Have you completed your answer?
20 A You asked about the history. Historical
21 trend that I'm walking through, I suppose, yes.
22 MR. PIUZE: If you haven't completed -- what
23 happens is -- it seems to me you hadn't completed it,
24 but by his prompting you, if you now say you have, then
25 he may do something at trial to say you can't say a
95
1 syllable beyond that.
2 THE WITNESS: Actually, I forgot. You
3 truncated my answer.
4 Over the years it's been a clear shift from a
5 dominance on advertising per se to promotions, and
6 alongside of that a heavy, heavy emphasis on the
7 in-store -- in-store promotions, in-store signage,
8 payments to storekeepers for placements of cigarettes.
9 All kinds of promotional elements.
10 This has grown and grown over the years to the
11 point where we know that something like one quarter of
12 all young people recently have received some promotional
13 materials from tobacco companies.
14 The integrated marketing communication concept
15 is very alive and well. There are many facets of
16 advertising. Up until recently billboards were a very
17 powerful phenomenon. Billboards that virtually circled
18 schools, up until the settlement. And promotions as
19 part of an advertising package can be a very powerful
20 phenomenon in inducing cigarette smoking. Nobody has a
21 warning on a t-shirt that says Joe Kool, Joe Cam or
22 Marlboro Man.
23 Q Are you finished with your answer? Do you
24 want to check with Mr. Piuze?
25 A Tentatively.
96
1 MR. PIUZE: I've got to admit I don't have a
2 clue whether he's finished or not.
3 THE WITNESS: You did remind me that I did
4 have something else in mind.
5 ///
6 BY MR. LEITER:
7 Q Dr. Goldberg, is it your opinion that Philip
8 Morris is marketing and advertising cigarettes to
9 underage people today?
10 A Does today -- what do you mean by "today"?
11 Q Today, even as we sit here in this deposition
12 room, February 23rd, whatever today's date is, 2001.
13 A If you mean post settlement -- is that what
14 you mean?
15 Q I mean today.
16 A Post settlement I believe that the answer is
17 yes. Maybe more indirectly but, yes, they are still

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18 advertising to young people in a number of contexts.
19 Q Explain to me what context.
20 A There's been an understanding -- in fact,
21 document that to appeal to those that are under 18, the
22 most effective way to do it is to use models that look
23 18 to 25. There's nothing an 18 year old would rather
24 be than 22. Nothing a 16 year old would rather be than
25 18. So use models. In fact, the initial code says use
97
1 models that are only over 25.
2 But we have evidence that says use models that
3 are over 25, but it would be nice if they looked less
4 than 25. In fact, there's a documented study that a
5 subset of certain people looking at these ads that were
6 collected by the researcher misattributed their age and
7 that they were younger.
8 Q What researcher?
9 A Mazis, Mazis. Even when the code said -- in
10 models that are 25 plus, use models, they used models
11 that may have been 25 plus, but enough of them that
12 looked somewhere between 18 and 25 -- not every one, but
13 a chunk of people in that study said these models look
14 less than 25.
15 Q When was that study done?
16 A I believe it was 1992.
17 Q Do you remember my question was about today?
18 A All right.
19 Q Is it your opinion that Philip Morris today is
20 using models who appear to be 18 to 22 years old?
21 A Well, I think that it really doesn't matter
22 because a healthy, attractive, successful, sexy, virile
23 25 year old is a very powerful inducement for a 16 year
24 old in any case.
25 Q It matters to me. Is it your opinion that
98
1 Philip Morris today is using models who appear to be 18
2 to 22 years old?
3 A I haven't done a study of that, but to the
4 extent they're using 25 year olds that are of -- appeal
5 to 16 year olds, and they are, and those 16 year olds
6 view the ads, I think it was the industry itself, the
7 tobacco industry journal that said that -- or the
8 broadcast -- the industry trade papers who say you can't
9 draw a curtain around adult advertising. As long as you
10 have very attractive and very effective adult --
11 assumedly targeted adults advertising, young people are
12 going to see them and be attracted by them.
13 Q My question was is it your opinion that Philip
14 Morris today is using models who appear to be 18 to 22
15 years old?
16 A That was not your original question.
17 Q That's what my question was. Is it your
18 opinion that today Philip Morris is using models in its
19 advertisements who appear to be 18 to 22 years old?
20 A Who appear to be?
21 Q Yes.
22 A I can't say.
23 Q In what other ways do you believe Philip
24 Morris is advertising and marketing to underage people
25 today?
99
1 A I believe that their supposed
2 counter-advertising to young people is really a very

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3 subtle way of advertising to people, young people.
4 Q By "counter-ads" what do you mean?
5 A Well, Philip Morris says to young people,
6 "It's really an adult thing; you shouldn't do it,"
7 there's nothing more appealing to a young person than to
8 say, "Hey, that's an adult thing. I ought to think
9 about it."
10 When the tobacco industry thinks to put "don't
11 smoke" on book covers in elementary school, these kids
12 were probably never thinking of smoking in the first
13 place. So when they put the word "smoke" on a cover of
14 a school book, it gets kids thinking of smoking. The
15 ostensible message is don't smoke, but they weren't even
16 thinking about smoking.
17 Q Is it your understanding that Philip Morris is
18 running advertisements today that says smoking is an
19 adult thing?
20 A The gist of their messages that they -- I
21 don't know how they label them -- their
22 counter-advertising to young people.
23 Q Do young people start smoking in part because
24 they think smoking is cool?
25 A Yes.
100
1 Q Would an ad directed to young people, telling
2 them that smoking is not cool be an effective message?
3 A Depends how it's done.
4 Q But it could be?
5 A Theoretic, but if the tag line always ends up
6 saying, "but it's an adult thing to do," that negates
7 however effective -- may negate however effective the
8 first part of that was.
9 Q In what other ways, in your opinion, is Philip
10 Morris advertising and marketing to underage people
11 today?
12 A Insofar as they've still allowed -- I believe
13 the settlement allows them to have one promotional
14 event, like a jazz festival or racing car events. Kids
15 still tune in to those. A lot of young people tune in
16 to those, and they're still promoting them. They're
17 associating things like racing cars, racing car drivers
18 with cigarettes and smoking.
19 And this goes back to Mr. Boeken's
20 understanding too. He saw those ads and wanted every
21 piece of it. He got the sheepskin jacket of the
22 Marlboro Man. He got the cigarette. Couldn't get the
23 horse so he got the motorcycle. Alongside of motorcycle
24 is a racing car. Racing cars got racing drivers that
25 take these calculated risks, and that's what the
101
1 cigarettes companies claim cigarettes are now,
2 calculated risks.
3 So here these guys are. Aren't they
4 impressive. Shouldn't you be like them. So as long as
5 they still use those promotional vehicles like race car
6 events, yes, they can still be appealing to young
7 people.
8 Q Is it your understanding that Philip Morris
9 tells smokers that smoking is a calculated risk?
10 A That has been their general line in public
11 relations efforts.
12 Q You know that on what basis?
13 A Statements I've seen on TV.

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14 Q Any other ways, in your opinion, Philip Morris
15 is advertising and marketing to underage people today?
16 A I think there's huge efforts for in-store
17 displays now. Huge. And insofar as, unfortunately,
18 young people walk into stores like everyone else, that's
19 going to have an impact on them.
20 Q Any other ways?
21 A I'm sure there are, but they don't come to
22 mind now.
23 Q I notice also here on your disclosure you
24 intend to testify about the targeting of women. Has
25 Philip Morris targeted women?
102
1 A The industry in general certainly has.
2 Q My question was Philip Morris.
3 A I'm not sure. Really, my focus is on youth
4 and on -- my regard -- my focus on women is with regard
5 to the industry at large and the fact that when women
6 are targeted, it's been very successful.
7 Q Can you identify any Philip Morris campaign
8 that targeted women?
9 A Not unless Virginia Slims was Philip Morris.
10 Q What's your opinion about Virginia Slims?
11 A Very effective campaign that, when it was run,
12 increased not only the percentage of sales for Philip
13 Morris, but the total share -- the total number of young
14 women smoking.
15 Q What time period are we talking about?
16 A Early 60's.
17 Q Early 60's?
18 A I have to check back. Maybe mid to late 60's.
19 I have to check back.
20 MR. PIUZE: Excuse me. I would like to make
21 an observation. One of your comments just now may have
22 assumed that Virginia Slims were made by Philip Morris.
23 The mere fact that Mr. Leiter continued with the
24 question doesn't necessarily mean they were.
25 THE WITNESS: They weren't.
103
1 BY MR. LEITER:
2 Q They weren't. Okay. Do you know who made
3 them?
4 A R.J. Reynolds.
5 Q Is Mr. Boeken a woman?
6 A Huh?
7 Q Is Mr. Boeken a woman?
8 A No. Safely, no.
9 Q Is Mr. Boeken a minority?
10 A I don't know.
11 Q I see also that you intend to testify about
12 targeting of minorities. Tell me what your opinion is
13 on that.
14 A Again, my focus is largely on youth. I know
15 that there were some brief efforts to target minorities,
16 and that there's been an undue number of billboards, for
17 example, in minority areas that have been successful,
18 especially in marketing menthol cigarettes.
19 Q What brand are we talking about?
20 A A menthol one. It's on the tip of my tongue.
21 I forget.
22 Q What time period are we talking about?
23 A This goes across a number of years with the
24 effort.

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25 Q What years?
104
1 A 60's, 70's.
2 Q Both decades?
3 A I believe so. But, again, my focus is on
4 youth.
5 Q What's the basis of your opinion that some
6 tobacco company was targeting minorities?
7 A I read a good deal about it. In fact, I have
8 a colleague who works --
9 THE REPORTER: Please speak up.
10 THE WITNESS: I read a good deal too. I have
11 a colleague that works in that area.
12 BY MR. LEITER:
13 Q Assuming that your colleague is not testifying
14 in this case, what's the basis of your opinion?
15 A That, again, that I have read a good deal and
16 talked with other colleagues about it.
17 Q Can you identify for me what you've read?
18 A Trade papers, largely.
19 Q Like what?
20 A Advertising Age.
21 Q Do you recall any articles in Advertising Age?
22 A Ongoing stream of how billboards were very
23 salient in black areas and, in fact, in Baltimore, court
24 cases led to the city of Baltimore trying to remove
25 alcohol and cigarette billboards because of their focus
105
1 on minority areas in the city.
2 Q Anything else?
3 A That there has been an effort to target
4 mentholated cigarettes at blacks.
5 Q What's the basis for your opinion that there
6 has been an effort to target blacks?
7 A Again, trade magazine materials.
8 Q Is market segmentation unusual to the tobacco
9 industry?
10 A No.
11 Q Anything wrong with it?
12 A There is when it succeeds in drawing in and
13 expanding a market for a product that is unhealthy and
14 is focused on young people in doing so, and vulnerable
15 underage people.
16 Q Do you believe -- do you have an opinion that
17 tobacco advertising targeted to minorities has increased
18 minority rates of smoking?
19 A I'm -- I'm not aware of that. I was referring
20 to women and youth.
21 Q In the last long clause in your disclosure is
22 methods and effectiveness of reaching the public with
23 health and other messages. What does that mean?
24 A Well, in part it means this communication of
25 light cigarettes being somehow healthier. It means the
106
1 association with all kinds of pristine healthy
2 environments and healthy people. It means the muddying
3 of the waters through public relations through the 50's
4 and 60's and 70's, insuring that there was a minimal
5 number of anti-cigarette materials in the media and
6 trying to craft positive materials, assuring the public
7 that the TIRC was going to look at health issues and
8 report back to them when, in fact, they were largely
9 deflecting health-related issues.

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10 Q Doctor, have you studied the statements made
11 by the tobacco industry about the health risks of
12 smoking over the last 50 years?
13 A I have looked at some comments that have
14 emanated from the TIRC, yes.
15 Q Some -- what do you mean by "some comments
16 that have emanated" --
17 A As they appear in the summary documents.
18 Q That we've already identified?
19 A Yes.
20 Q Have you systematically studied statements
21 made by the tobacco industry over the 50 years about the
22 health risks of smoking?
23 A I have followed the summary documents and how
24 they represent the efforts of the cigarette companies to
25 minimize the health risks of smoking.
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1 Q Other than reviewing the summary documents,
2 have you undertaken any study of the statements made by
3 the tobacco industry about the health risks of smoking
4 over the last 50 years?
5 A I have read the summary documents.
6 Q Other than the summary documents, have you
7 read anything?
8 A I'm trying to recall in the Ness Motley
9 efforts, I may have come across -- I don't remember.
10 Q You also -- correct me if I misheard you --
11 said that the tobacco industry tried to minimize the
12 available information about the health risks of smoking.
13 Is that what you said?
14 A I said that they tried to minimize the number
15 of materials that were produced that were anti-cigarette
16 that were focused on the health issues.
17 Q What's the basis for that opinion?
18 A Again, portrayal of the efforts of the TIRC in
19 these summary documents.
20 Q The summary documents that we're referring to
21 are things like what's been marked as Exhibit 16 from
22 the Advocacy Institute?
23 A No, they are 3, 13, certainly 11, 7. There's
24 one more.
25 Q 16.
108
1 A No. 14.
2 Q Have you undertaken any study of the
3 information that was available to the public on the
4 health risks of smoking over the last 50 years?
5 A Say again.
6 Q Have you undertaken any study of the
7 information that was available to the public on the
8 health risks of smoking over the last 50 years?
9 A No.
10 Q Have you undertaken any study on whether the
11 tobacco industry was successful in minimizing the
12 availability of information about the health risks of
13 smoking?
14 A It seems fairly clear to me that as I've read
15 through these summary reports that they were successful.
16 Q I didn't ask you whether you believe they were
17 successful. I asked you what study you've undertaken to
18 determine that?
19 A I've studied the issue by reading about it.
20 Q In the documents you've identified?

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21 A Yes.
22 Q Are cigarettes an evil, Doctor?
23 A I don't think "evil" is a word that has much
24 meaning.
25 Q Is it a word you've used in describing
109
1 cigarettes?
2 A No.
3 Q Is it a word you used recently in the New York
4 Times to describe cigarettes?
5 A Me in the New York Times?
6 Q Yes.
7 A I haven't been to the New York Times.
8 Q Is it a word you described in any media to
9 describe smoking?
10 A Why would you say I was in the New York Times?
11 Q Is it a word that you have used in any media
12 to describe smoking as an --
13 A Me personally?
14 Q You personally.
15 A No.
16 MR. LEITER: Let's go off the record.
17 (Discussion off the record.)
18 BY MR. LEITER:
19 Q Doctor, during the course of this deposition,
20 have you covered all the areas on which you may offer
21 testimony on this case?
22 A I believe so.
23 MR. LEITER: I don't have any further
24 questions.
25 MR. PIUZE: Nor do I.
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1 MR. LEITER: Can we agree without need of
2 reciting to the same stipulations that we have been
3 imploying in various depositions?
4 MR. PIUZE: I just wonder how you think this
5 court reporter is clairvoyant.
6 MR. LEITER: Why don't you recite the
7 stipulations.
8 MR. PIUZE: We will relieve the court reporter
9 of her obligations under the Code. The original of the
10 deposition will be sent to me.
11 MR. LEITER: Send it to me.
12 MR. PIUZE: To you?
13 MR. LEITER: You want it sent to you?
14 MR. PIUZE: Yeah, to me. I will notify Philip
15 Morris of any changes, addictions or corrections --
16 MR. LEITER: You mean additions not
17 addictions?
18 MR. PIUZE: That was a slip. Excuse me.
19 Within two weeks of my receipt or prior to the time --
20 prior to the time the trial starts, whichever is later.
21 And if I don't, you can use the deposition as if it's a
22 signed, sealed and delivered original, and I will either
23 keep custody of the original, or I'll give it to you to
24 keep custody of.
25 MR. LEITER: Okay. So stipulated.
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1 (Discussion off the record.)
2 MR. PIUZE: Mr. Leiter and I have just agreed
3 that you should send the original directly to the
4 deponent.
5 MR. LEITER: Okay.

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6 THE REPORTER: And you'll take a copy?
7 MR. PIUZE: I will.
8 (Whereupon, at 3:15 P.M. , the deposition of
9 MARVIN E. GOLDBERG, Ph.D. was adjourned.)
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1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4
5
6
7 I, MARVIN E. GOLDBERG, Ph.D.,
8 hereby certify under penalty of perjury under the laws
9 of the State of California that the foregoing is true
10 and correct.
11 Executed this day of ,2001
12 at ,
13 California.
14
15
16
17
18
19 _____
20 MARVIN E. GOLDBERG
21
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113
1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4 I, LAURA J. MELLINI, Certified Shorthand
5 Reporter, number 8181, for the State of California, do
6 hereby certify;
7 That prior to being examined,
8 MARVIN E. GOLDBERG, Ph.D.,
9 the witness named in the foregoing deposition, was by me
10 duly sworn to testify the truth, the whole truth and
11 nothing but the truth;
12 That the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me;
15 That the foregoing transcript is a true
16 record of the testimony and all objections made at the

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17 time of the examination.
18 I hereby certify that I am not interested
19 in the event of the action.
20 IN WITNESS WHEREOF, I have subscribed my
21 name this day of , 2001.
22
23 _____
24 Certified Shorthand Reporter
25 for the State of California

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